

## HOTLINE COMPLETION REPORT

Navy Hotline 201201117

DoD IG 121927

30 April 2014

### 1. Name and Identifying Information and Location of Working Papers

#### a. Investigator and Identifying information.

(b) (6), (b) (7)(C)

#### b. Location of Working Papers.

Commander, Space and Naval Warfare Systems Command  
Office of the Inspector General (Code 014)  
4301 Pacific Highway  
San Diego, CA 92110-3127.

### 2. Background and Summary

#### a. Hotline Control Numbers

NIGHTS 201201117/DoDIG 121927

#### b. Summary of the Complaint.

(1) The anonymous complaint dated September 2011 was originally submitted to the Department of Defense (DoD) Inspector General (IG) in September 2011 (Hotline Case No. 121927). The DoD IG referred the complaint to the Navy Inspector General (NAVINSGEN) on 6 April 2012. NAVINSGEN transferred the case to the Space and Naval Warfare Systems Command Inspector General's (SPAWAR IG) Office on 10 April 2012. The complaint contains numerous allegations that asserts wrong doing by the following staff of Program Executive Office (PEO)-Enterprise Information Systems (EIS), Program Management Warfare (PMW) 205<sup>1</sup>, Naval Enterprise Network (b) (6), (b) (7)(C)

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<sup>1</sup> PMW 205, Naval Enterprise Network (NEN), stood up in February 2011 when the Navy/Marine Corp Intranet (NMCI), PMW 200 and the Next Generation Enterprise Network (NGEN), PMW 210 were combined. Initially, the

(b) (6), (b) (7)(C), United States Navy (USN), former (b)(6), (b)(7)(c) for (b)(6), (b)(7)(c), (b) (b) (6), (b) (7)(C), (b)(6), (b)(7)(c) (b)(6), (b)(7)(c) for the (b)(6), (b)(7)(c) (b)(6), (b)(7)(c) (d) (b) (6), (b) (7)(C), (b)(6), (b)(7)(c) for (b)(6), (b)(7)(c), (e) (b) (6), (b) (7)(C), (b)(6), (b)(7)(c) for (b)(6), (b)(7)(c), and (f) (b) (6), (b) (7)(C), (b)(6), (b)(7)(c)

(2) Specifically, the complaint **alleges**:

(i) RACIAL DISCRIMINATION

- (a) (b) (6), (b) (7)(C) ' motivation for taking adverse personnel actions against (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) was due in part to their race.
- (b) (b) (6), (b) (7)(C) ' motivation for treating (b) (6), (b) (7)(C) harshly was due in part to his race.
- (c) (b) (6), (b) (7)(C) motivation for treating (b) (6), (b) (7)(C) harshly was due in part to her race.

(ii) UNFAIR REMOVALS FROM TEAM LEAD POSITIONS

- (a) (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) acted unfairly by removing (b) (6), (b) (7)(C), a "top performer", from a position of responsibility to a position of lesser responsibility.
- (b) (b) (6), (b) (7)(C) did not act with fairness when he:
  - Removed (b) (6), (b) (7)(C), (b)(6), (b)(7)(c) embedded employee from her position as the Test and Evaluation (b)(6), (b)(7)(c) and replaced her with (b) (6), (b) (7)(C) (a former (b)(6), (b)(7)(c)) who was allegedly not qualified to assume the role.
  - Removed (b) (6), (b) (7)(C) from his position as Transport lead without justification.

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two groups remained at separate physical locations (Crystal City/PMW 200 and Washington Navy Yard/PMW 210), but were combined in the summer of 2012. PMW 205 is now located at the Washington Navy Yard. (b) (6), (b) (7)(C) was its first PM. He was relieved of his position in June 2013.

(iii) UNETHICAL OR ABUSIVE BEHAVIOR IN THE WORKPLACE

- (a) (b) (6), (b) (7)(C) :
- Acted dishonestly and disrespectfully when he covertly dialed into a closed meeting convened by the then (b) (6), (b) (7)(C) , (b) (6), (b) (7)(C) , to allow (b) (6), (b) (7)(C) staff members to vent about morale issues at the newly formed (b) (6), (b) (7)(C) (hereafter referred to as the (b) (6), (b) (7)(C) meeting).
  - Showed favoritism to the former NMCI PMW 200 staff members and a lack of concern and caring for the staff at the former PMW 210, NGEN, as demonstrated by:
    - o His spending the majority of his time each week at the former PMW 200, NMCI, Crystal City facilities vice the former PMW 210, NGEN, offices located at the Washington Navy Yard (WNY).
    - o His intentional avoidance of any form of communication or guidance with the former PMW 210/NGEN's managers, team leads and staff.
  - Abused his authority when he threatened to not renew (b) (6), (b) (7)(C) ' orders, in retaliation for comments (b) (6), (b) (7)(C) made at the (b) (6), (b) (7)(C) meeting.
  - Demonstrated poor leadership and lack of compassion and concern for the morale and welfare of (b) (6), (b) (7)(C) when he told her that he did not need her or the role of strategic planner that she performed.
- (b) (b) (6), (b) (7)(C) demonstrated dishonest behavior by making false accusations against employee (b) (6), (b) (7)(C) .
- (c) (b) (6), (b) (7)(C) treated (b) (6), (b) (7)(C) abusively during a staff meeting by shouting at him in front of his peers.
- (d) (b) (6), (b) (7)(C) :

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<sup>2</sup> The anonymous complainant noted the victim's name as (b) (6), (b) (7)(C) vice (b) (6), (b) (7)(C) . Witness accounts note that there is no (b) (6), (b) (7)(C) and support that the victim was (b) (6), (b) (7)(C) .

- Treated her subordinate, (b) (6), (b) (7)(C), unfairly by not providing any assignments or direction.
- Treated (b) (6), (b) (7)(C), USN retired, disrespectfully by ignoring him and not sharing work with him.

(e) The complaint also alleges that the following people received "harsh treatment", but the name of the alleged abuser was not given:

- (b) (6), (b) (7)(C),
- (b) (6), (b) (7)(C), USN Retired
- (b) (6), (b) (7)(C),
- (b) (6), (b) (7)(C),
- (b) (6), (b) (7)(C),
- (b) (6), (b) (7)(C),
- (b) (6), (b) (7)(C),
- (b) (6), (b) (7)(C),
- (b) (6), (b) (7)(C),
- (b) (6), (b) (7)(C),
- (b) (6), (b) (7)(C),
- (b) (6), (b) (7)(C),
- (b) (6), (b) (7)(C),
- (b) (6), (b) (7)(C), and
- (b) (6), (b) (7)(C)

(iv) ACQUISITION OR CONTRACT VIOLATIONS

- (a) (b) (6), (b) (7)(C) improperly used NGEN's ACAT 1 acquisition funds allocated for the approved acquisition plan for effort to revise the acquisition plan.
- (b) (b) (6), (b) (7)(C) grossly mismanaged the acquisition labor force by telling certain NGEN team members that he did not need their Integrated Product Team (IPT). Some team members were idle.
- (c) (b) (6), (b) (7)(C) violated contract terms and the Federal Acquisition Regulations (FAR) by allowing contractor support employees to perform inherently governmental functions.
- (d) (b) (6), (b) (7)(C) improperly used a Booz Allen Hamilton contractor support employee for personal services by having her drive him around.

(v) MISUSE OF PERSONALLY IDENTIFIABLE INFORMATION

(b) (6), (b) (7)(C), (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) improperly discussed personally identifiable information (PII) concerning government employees during meetings when contractor employees were present.

(vi) SECURITY VIOLATIONS

(b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) violated Navy security policy when they changed the security procedures at the NGEN offices to one that (a) did not require visitors to sign in, and (b) sanctioned tailgating into the facilities.

(3) During the course of our investigation additional allegations emerged, were received via the Hotline, or were reported as follows:

(i) DISCRIMINATION BASED ON AGE AND GENDER

- (a) (b) (6), (b) (7)(C)' motivation for his unfair and disrespectful behavior toward (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) was based in part on his discrimination against older women.
- (b) (b) (6), (b) (7)(C)' motivation for his unfair treatment of (b) (6), (b) (7)(C) was based in part on discrimination due to his ethnicity.

(ii) UNETHICAL TREATMENT OF OTHERS IN THE WORKPLACE

- (a) Anonymous complaint dated 10 July 2013 alleges that (b) (6), (b) (7)(C) uses intimidation tactics such as yelling, screaming, cursing and pointing fingers at others in the workplace<sup>3</sup>.
- (b) (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) acted disrespectfully and unprofessionally by yelling at others during a work related meeting.
- (c) (b) (6), (b) (7)(C)' exhibited disrespectful and unfair behavior towards employees: (b) (6), (b) (7)(C)

<sup>3</sup> In addition to the anonymous complaint, the management of SPAWAR 5.0 requested an IG inquiry into alleged abusive and intimidating behavior by (b) (6), (b) (7) towards certain members of its staff embedded in PMW 205.

(b) (6), (b) (7)(C)

- (d) (b) (6), (b) (7)(C), acted abusively toward (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C).
- (e) (b) (6), (b) (7)(C), (b) (6), (b) (7)(C), PMW (b) (6), (b) (7)(C), failed to control the unprofessional behavior of his subordinate, (b) (6), (b) (7)(C), during a meeting.
- (f) (b) (6), (b) (7)(C) violated the terms of the Falconwood support contract by asking one of its contractor support employees to perform a personal service.
- (g) (b) (6), (b) (7)(C) treated (b) (6), (b) (7)(C) with disrespect during a meeting by constantly interrupting him.

(iii) TIMEKEEPING VIOLATIONS

(b) (6), (b) (7)(C) does not work all hours for which he is paid. He arrives late and leaves early.

(iv) CONTRACT VIOLATIONS

- (a) (b) (6), (b) (7)(C), (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) improperly assigned or approved the assignment of a subcontractor support employee to an inherently governmental position as project lead of the ngNET/NETt project.
- (b) That an organizational conflict of interest (OCI) occurred when the ngNET/NETt project lead who was a subcontractor to the supplier of the NETt software development services continued in his role as project lead after the award of the NETt software development contract to his company's prime contractor.

**c. Summary of Outcome of Investigation.**

(1) The allegations that (b) (6), (b) (7)(b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) actions against certain employees was motivated by discrimination based on race, gender or age have been **dismissed** because EEO matters are not within the IG's cognizance to investigate.

(2) The allegation that (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) unfairly moved (b) (6), (b) (7)(C) from a position of responsibility to a position of lesser responsibility has been

**dismissed.** The IG complaint process does not cover matters concerning the reassignment of Navy civilian employees. These matters must be processed using appropriate civilian grievance, complaint, or appeal systems.

(3) The allegation that (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) from their team lead positions has been **dismissed**. Again, the IG complaint process does not cover matters concerning the reassignment of Navy civilian employees. These matters must be processed using appropriate civilian grievance, complaint, or appeal systems.

(4) The allegation that (b) (6), (b) (7)(C) during the period Oct 2010 through September 2011 treated certain subordinates unfairly, cruelly, and acted dishonestly in violation of the Article 133, Uniform Code of Military Justice (UCMJ), Conduct unbecoming an officer and a gentleman is **substantiated**.

(5) The allegation that (b) (6), (b) (7)(C) demonstrated dishonest and disrespectful behavior towards (b) (6), (b) (7)(C) in violation of U.S. Navy Regulations, Chapter 11, Section 2, Standards of Conduct and DoD 5500.07-R, Chapter 12, section 401 has been **dismissed**. (b) (6), (b) (7)(C) has left employment with the Navy and all attempts to locate him have failed.

(6) The allegation that (b) (6), (b) (7)(C) behaved abusively toward (b) (6), (b) (7)(C) during a meeting in 2011 in violation of U.S. Navy Regulations, Chapter 10, Section 2., Authority, Paragraph 1023, and Article 92, UCMJ, Failure to obey order or regulation is **substantiated**.

(7) The allegation that (b) (6), (b) (7)(C) behaved unfairly and disrespectfully towards (b) (6), (b) (7)(C), (b) (6), (b) (7)(C) (USN retired), and (b) (6), (b) (7)(C) in violation of DoN, Civilian Human Resource Manual (CHRM), Subchapter 752, section 7 and Appendix B, is **substantiated**.

(8) The allegation that unnamed members of PMW 205's management dispensed harsh treatment toward (b) (6), (b) (7)(C), (b) (6), (b) (7)(C) (USN Retired), (b) (6), (b) (7)(C), has been **dismissed** because the complaint lacks specific information concerning the incident(s) or name(s) of

the subject(s). However, during the course of the investigation other potential violations emerged that involve certain of the alleged victims as discussed in paragraph (para.) 2.b.(3)(ii).

(9) The allegation that (b) (6), (b) (7)(C) acted disrespectfully and unprofessionally towards others by yelling, and cursing in the workplace in violation of DoN, Civilian Human Resource Manual (CHRM), Subchapter 752, section 7 and Appendix B, is **substantiated**.

(10) The allegation that (b) (6), (b) (7)(C) acted disrespectfully and unprofessionally towards others by yelling in the workplace in violation of DoN, Civilian Human Resource Manual (CHRM), Subchapter 752, section 7 and Appendix B, is **substantiated**.

(11) The allegation that (b) (6), (b) (7)(C) acted disrespectfully and unprofessionally towards others by yelling in the workplace in violation of DoN, Civilian Human Resource Manual (CHRM), Subchapter 752, section 7 and Appendix B, is **substantiated**.

(12) The allegation that (b) (6), (b) (7)(C) acted abusively towards two subordinates by yelling and cursing during two separate incidents in violation of U.S. Navy Regulations, Chapter 10, Section 2., Authority, Paragraph 1023, and Article 92, UCMJ, Failure to obey order or regulation is **substantiated**.

(13) The allegation that (b) (6), (b) (7)(C) failed to intervene and stop the unprofessional behavior of his subordinate, (b) (6), (b) (7)(C) in violation of Department of the Navy (DoN) Civilian Human Resources Manual (CHRM), Subchapter 752, Disciplinary Actions is **substantiated**.

(14) The allegation that (b) (6), (b) (7)(C) violated the terms of the Falconwood support contract by requesting one of its employees to perform a personal service in violation of the terms of the contract is **substantiated**.

(15) The allegation that (b) (6), (b) (7)(C) improperly directed effort to change the approved NGEN acquisition plan that originally called for the award of five contracts to an award of two contracts with the ability to award one contract has been **closed without further investigation**. Based upon our preliminary inquiry, subject matter expert (SME) review of the NGEN acquisition plan and the requirements of ACAT

1 type programs, the milestone C had not been completed. Therefore, (b) (6), (b) (7)(C) was permitted to modify the plan and expend the appropriated funds to do so.

(16) The allegation that (b) (6), (b) (7)(C) mismanaged the NGEN acquisition labor force for 6 months by not directing the NGEN team to work on the request for proposal (RFP) leaving employees idle in violation of 5 USC 2301b.(5) is **not substantiated**.

(17) The allegation that (b) (6), (b) (7)(C) allowed contractor personnel to perform inherently government functions in violation of the contract terms and FAR 7.503(a) is **not substantiated**.

(18) The allegation that (b) (6), (b) (7)(C) had a Booz Allen Hamilton (BAH) support employee drive him to personal venues in violation of the terms of the BAH contract is **substantiated**.

(19) The allegation that (b) (6), (b) (7)(C), (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) failed to safeguard the privacy of their employees by improperly discussing personally identifiable information (PII) concerning their performances during meetings where contractor employees were present in violation of DoD 5400.11-R, Department of Defense Privacy Program, dated May 14, 2007, and SECNAVINST 5211.5E, Department of the Navy Privacy Program, dated December 28, 2005 is **not substantiated**.

(20) The allegation that (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) improperly revised office security/access policy by (i) to not require visitors to sign-in, and (ii) permitting tailgating into the PMW 205 offices at the Washington Navy Yard (WNY) has been **closed without further investigation**. Our preliminary inquiry found that no security policy or instruction was breached. We found (i) there was never a change to the PMW 205 visitor policy or practice that required visitors to sign-in upon entering the office space, but (ii) there was evidence that the subjects did change a security practice to permit tailgating. However, during calendar year 2011, the authority to set the security policy was at the discretion of PMW 205's management. As confirmed with subject matter expert, (b) (6), (b) (7)(C), SPAWAR Security Head, the NEN spaces at the Washington Navy Yard during 2011 were not classified or designated restrictive spaces. Therefore, no violation occurred.

(21) The allegation that (b) (6), (b) (7)(C) does not work for all hours for which he is paid in violation of SPAWARINST 2635.705, Use of official time is **not substantiated**.

(22) The allegation that (b) (6), (b) (7)(C), (b) (6), (b) (7)(C), and (b) (6), (b) (7)(C) improperly assigned a contractor to an inherently governmental function in violation of FAR Subpart 7.5 is **not substantiated**.

(23) The allegation that (b) (6), (b) (7)(C) created an organizational conflict of interest (OCI) when he allowed the ngNET/NETt project lead, a subcontractor to the supplier of the NETt software development services, to continue in his role as project lead after the award of the NETt software development contract to his company's prime contractor, Deloitte Consulting LLP, **has been referred to the SPAWAR Office of Counsel on 4 March 2014 for their action deemed appropriate.**<sup>4</sup> NETt was envisioned to be the prior NMCI software tool with modifications to enable it to work more easily with the NGEN contract. The selection of Deloitte for the NETt contract was because Deloitte had previously developed the NET software tool. Witness testimony taken for another related allegation supports that the failure to develop a software ordering tool represented a significant risk to the execution of the NGEN contract. For these reasons, it may have been reasonably necessary for PEO-EIS/PMW 205 management to proceed with this contractual arrangement in spite of the apparent OCI. Therefore, this allegation is a matter more appropriately examined by counsel in conjunction with contracts. The matter has been referred to them to determine (i) if an OCI occurred because of the subcontract project leads involvement, or (ii) if an OCI did occur, were steps taken by management to sufficiently mitigate the impact of the OCI, or (iii) if management invoked a waiver of the related FAR subpart 9.505-1 OCI requirements concerning providing technical direction, and if a waiver was invoked, was the waiver adequately documented.

**3. First Allegation:** That (b) (6), (b) (7)(C), United States Navy (USN), Former (b) (6), (b) (7)(C)

<sup>4</sup> On 22 April 2014, we received a response from (b) (6), (b) (7)(C), PEO Acquisition Law supervisor to our referral. (b) (6), (b) (7)(C) advised that in November 2013, (b) (6), (b) (7)(C) was relieved of his position at the PEO. His successor, (b) (6), (b) (7)(C) immediately recognized the OCI potential and reorganized the ngNET/NETt team to eliminate the appearance of conflict.

<sup>5</sup> (b) (6), (b) (7)(C) has been on temporary additional duty from PEO-EIS to SPAWAR's Washington Liaison Office since 24 June of 2013.

(b)(6), (b)(7)(c) during the period Oct 2010 through September 2011 treated certain subordinates unfairly, cruelly, and acted dishonestly in violation of the Article 133, Uniform Code of Military Justice (UCMJ), Conduct unbecoming an officer and a gentleman. **Substantiated.**

a. **Facts:**

(1) Article 133 UCMJ - Conduct unbecoming an officer and gentleman, states in part, "Any commissioned officer, cadet, or midshipman who is convicted of conduct unbecoming an officer and a gentleman shall be punished as a court-martial may direct... (2) *Nature of offense.* Conduct violative of this article is action or behavior in an official capacity which in dishonoring or disgracing the person as an officer, seriously compromises the officer's character as a gentleman... There are certain moral attributes common to the ideal officer and the perfect gentleman, a lack of which is indicated by acts of dishonesty, unfair dealing, indecency, indecorum, lawlessness, injustice, or cruelty."

(2) Subsequent to this action, the DOD issued DoD Instruction (DoDI) number 1438.06 *Workplace Violence Prevention and Response Policy* dated 16 January 2014. It states in part, "3. POLICY. It is DoD policy that:

a. DoD Components work with employees to maintain a work environment free from violence, threats of violence, harassment, intimidation, and other disruptive behavior. All employees are responsible for promoting a safe work environment.

b. Violence, threats, harassment, intimidation, and other disruptive behavior will not be tolerated in the workplace; all reports of incidents will be taken seriously and will be dealt with appropriately.

c. Those who engage in such behavior may be:

(1) Immediately removed from the premises.

(2) Denied re-entry pending completion of an appropriate investigation.

(3) Subject to removal from federal service, criminal prosecution, or both.

d. DoD employees will comply with the workplace violence prevention and response policies of their organizations...."

(3) DoDI number 1438.06 *Workplace Violence Prevention and Response Policy* dated 16 January 2014 also contains a definition of workplace violence at its Glossary, Part II, Definitions. It states, "workplace violence. Any act of violent

behavior, threats of physical violence, harassment, intimidation, bullying, verbal or non-verbal threat, or other threatening, disruptive behavior that occurs at or outside the work site."

(4) Mr. Timothy Dimoff is president of SACS Consulting & Investigative Services, Inc. He is a speaker, trainer, author and leading authority on high-risk workplace and human resource security and crime. In a recent webinar presentation titled, *Workplace Bullying - What, Why and Who*, he stated, "the term 'harassment' refers to the illegal form of discrimination. Employees often say they are being harassed when they are subjected to inappropriate conduct or behavior which is not illegal, but unacceptable in the workplace. The term frequently used to describe this type of behavior and conduct is workplace bullying."

(5) Mr. Dimoff defines workplace bullying as "Repeated unreasonable actions of an individual(s) directed towards an employee(s), which are intended to: •Cause health risks •Intimidate •Degrade •Humiliate •Undermine."

(6) Mr. Dimoff notes that bullying includes "Verbal Abuse Spreading Gossip/Lies Threatening Behavior Humiliation Work Interferences/Sabotage Persistent Criticisms of Employees' Work, Insulting Workers' Habits, Attitudes or Personal Lives, Reminding Employees of Mistakes." However, Mr. Dimoff also notes that bullying can often be subtle and may include "behaviors that do not appear obvious to others: - Excluding employees from lunch - Being ignored by co-workers. [The] Insidious nature of such behaviors makes them difficult to identify." Additionally, Mr. Dimoff in response to participant questions noted that the actions of the perpetrator(s) do not have to be intentional.

#### Background:

(7) In February 2011 PEO-EIS combined PMW 200\Navy Marine Corp Intranet (NMCI) and PMW 210\Next Generation Enterprise Network (NGEN) to form a singular PMW 205\Naval Enterprise Network (NEN). The NGEN office was originally stood-up to support the ACAT 1 acquisition of the NGEN. The NGEN contract was the anticipated successor to the NMCI and interim Continuity of Services (CoSC) contracts. (b)(6), (b)(7)(c)

was identified to be the new (b)(6), (b)(7)(c) ) for NEN, (b)(6), (b)(7)(c) .

(8) The physical combining of the two offices did not occur until approximately the summer of 2012, over a year and a half after the two program offices were merged. Therefore, initially, the former PMW 200 remained physically located in the Crystal City area of Arlington, Virginia, and the former PMW 210 remained physically located at the Washington Navy Yard (WNY). Both groups are now located at the WNY.

(9) Prior to the merger, each PMW had its own Program Manager (PM). (b)(6), (b)(7)(c) was the PM for the former PMW 200, the NMCI group, and (b)(6), (b)(7)(C) was the PM for the former PMW 210, the NGEN group. (b)(6), (b)(7)(C) was the (b)(6), (b)(7)(c) ) for (b)(6), (b)(7)(C) and (b)(6), (b)(7)(C) was the DPM for (b)(6), (b)(7)(C) .

(10) No organizational change management plan was developed or in place at the time of the merger of the two PMWs. (b)(6), (b)(7)(C) stated, "Well, the... whole reason for combining the two program offices was to get rid of the overlap."

(11) According to (b)(6), (b)(7)(C) , (b)(6), (b)(7)(C) and (b)(6), (b)(7)(C) were tasked to do a change Management plan prior to the merger, but it never "was ever gonna happen." (b)(6), (b)(7)(C) explained, "...before I got there, they had two Program Managers. Neither one of them wanted to listen to what the other guy had to say, so they left it alone. I was told on more than one occasion nothing will change until the day you get onboard as the PM. Just leave it alone. And so, instead of giving people that time to understand what the new organization was gonna look like, they threw it together and I was forced at the same time as trying to put out an RFP, rewrite an acquisition strategy. I was also tasked with pullin' together two desperate organizations who, quite frankly, didn't like each other."

(12) (b)(6), (b)(7)(C) also observed that the NGEN program was floundering prior to the merger of the PMWs. She stated, "I, I don't think it was any surprise to anyone that the program, the Acquisition of NGEN was in trouble. It was behind." She noted that (b)(6), (b)(7)(C) ' number one goal, "He wanted to get the RFP on the street. That was his, his priority, Milestone C... So it was get the RFP written, get it on the street, you know, get it released, get it competed, get it eva... awarded, and that was, that was the goal."

(13) (b) (6), (b) (7)(C) became the singular PM for PMW 205 on 24 February 2011. However, former (b) (6), (b) (7)(c) and (b) (6), (b) (7)(c) (b) (6), (b) (7)(c) ) (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) (b) (6), (b) (7), respectively, remained in the DPM positions for the two separate locations until September of 2011.

(14) (b) (6), (b) (7)(C) completed the post graduate Major Command Leadership Course in 2010 prior to assuming the PM position.

(b) (6), (b) (7)(C) allegedly treated the former PMW 210 NGEN staff unfairly as demonstrated by his spending more time at the PMW200/NMCI staff offices.

(15) According to (b) (6), (b) (7)(C), beginning in approximately September 2010 before he formally became the (b) (6), (b) (7)(c) of (b) (6), (b) (7)(c), (b) (6), (b) (7)(C) began spending time at the PMW 200/NMCI location. (b) (6), (b) (7)(C) stated, "So, he was spending almost all of his time exclusively there at [PMW] 200 [NMCI/CoSC] - between 200 and at the PEO which was also in Crystal City..."

(16) Several witnesses who were interviewed opined that this demonstrated that (b) (6), (b) (7)(C) favored the staff at the former PMW 200.

(17) (b) (6), (b) (7)(C), who was initially located at PMW 200, also recalled that (b) (6), (b) (7)(C) ' spent the majority of his time at PMW 200, but she noted a reason for his choice. She stated, "He sat at Crystal City in an NMCI office. He had an office at the Navy Yard, but almost never ever went there, just 'cause he was at the Pentagon all the time in the PEO... And, let's face it, it was a nicer office. I mean, you know."

(18) (b) (6), (b) (7)(C) was (b) (6), (b) (7)(C) ' executive assistant at the WNY. She recalled that initially (b) (6), (b) (7)(c) was physically at the WNY, "... hardly at all." However, she did recall that when he did relocate to the WNY, he frequently had meetings at the Pentagon.

(19) (b) (6), (b) (7)(C) ' acknowledged that "as a matter of physical time, I probably spent more time in Crystal City, but that was because I spent the majority of my time at the PEO and the Pentagon, and Crystal City was frankly, just a whole lot more convenient... I was summoned is probably the best word; to the PEO and the Pentagon regularly... nearly every day for quite some time."

(20) (b) (6), (b) (7)(C) opined that it was the best use of "government resources" because he was close to the Pentagon and he could walk to the PEO. (b) (6), (b) (7)(C) also stated that he did not have a car and did not drive to work at that time.

(21) (b) (6), (b) (7)(C), the former (b) (6), (b) (7)(C) Acquisition Lead, in late 2010/early 2011, stated that the former (b) (6), (b) (7)(C) and the (b) (6), (b) (7)(C) offices were within 3 blocks of each other. Additionally, the Pentagon was located approximately 1 mile from PMW 200.

(b) (6), (b) (7)(C) allegedly treated the former PMW 210/NGEN staff unfairly as demonstrated by his avoidance of communication with them.

(22) Because (b) (6), (b) (7)(C) was initially spending so much time at the former NMCI/PMW 200 offices, (b) (6), (b) (7)(C) stated "...we had set up -- at the time myself and my boss, (b) (6), (b) (7)(C) --... we had organized and set up a series of briefings, introductions with all our [PMW] 210 people with him and many of those introductory sessions with him either were cancelled and did not happen or the outcome of them were not received well by those people."

(23) When asked who cancelled the meetings, (b) (6), (b) (7)(C) replied, "(b) (6), (b) (7)(C) ."

(24) (b) (6), (b) (7)(C) received feedback on the introductory meetings that did occur. He said that he was told by participants that "...either they were cut short... [or] they were told that... - he [(b) (6), (b) (7)(C)] didn't believe that they were on the right track or doing the right things that these things were going to change, et cetera." (b) (6), (b) (7)(C) believed that (b) (6), (b) (7)(C) was of the mindset that NGEN was "doing the wrong things... That they were on the wrong path and that needed to be fixed." (b) (6), (b) (7)(C) argued that the NGEN staff was doing nothing other than "executing its present direction which at the time was clearly identified in an approved acquisition strategy and a clear direction was approved all the way up to the milestone decision authority."

(25) The following witnesses stated that (b) (6), (b) (7)(C) ignored them or cancelled meetings:

- (b) (6), (b) (7)(C) , former (b)(6), (b)(7)(c) Lead stated, "He (b) (6), (b) (7)(C) ] just stopped -- wouldn't communicate with us. He would not even allow us to brief him when he came in. He said he wanted all of the leads to brief him on the status of their perspective areas. Well, for T&E we were on this calendar at least 10 times, each time he cancelled it and never would allow us to brief him."
- (b) (6), (b) (7)(C) former (b)(6), (b)(7)(c) recalled, "Hardly ever spoke to you, hardly ever gave you any kind of direction. Just kind of like, he just -- I mean for me, he just -- it was just like I was invisible."
- (b) (6), (b) (7)(C) took over the (b)(6), (b)(7)(c) lead when (b) (6), (b) (7)(C) was moved to (b)(6), (b)(7)(c) . In Dec 2012 (b) (6), (b) (7)(C) too left PMW 205 for a position at the Defense Acquisition University. She explained that she left because of the opportunity, but also because "the environment at NGEN was just, uh, extremely stressful and, uhm, not a very happy workplace." She stated that (b) (6), (b) (7)(C) treated her with "benign neglect". She explained, "...he seemed to operate with a sort of a group of insiders, and then there were people that he sort of... This is just all from what I, my perception. He had a group, a small group of insiders that he trusted. Then there were a group of people that he, he thought were okay, but sort of take 'em or leave 'em, you know. Uhm, didn't pay too much attention to them either good or bad, and then there were people he really disliked, uhm, and I was sort of in the middle category there for a while, that he just neither... He, he thought I did okay, but nothing to write home about and didn't really pay a lot of mind to what I was doing, either good or bad.
- (b) (6), (b) (7)(C) (retired) was part of PMW 205's Transition team before she retired. She said, "Like when the Commanding Officer (b) (6), (b) (7)(C) ] first got there, the division I was in, assigned to, we had -- I think we had three meetings scheduled with him where he -- he just didn't make it. He couldn't make it. And I remember like the third one, he came in, we were preparing for the

meeting. And he came into the office we were preparing in... -- while we were in the Transition Office,... and said, 'I'm not going to be able to make the meeting today, but I just want to let you know, I don't think we need Transition.' "

- (b) (6), (b) (7)(C) , former (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) , stated, "I mean I will tell you that I felt ignored. I uhm, I was always told to fill up the white space and make it happen..."
- (b) (6), (b) (7)(C) stated he was the former lead for (b) (6), (b) (7)(C) s Strategy and Plans. (b) (6), (b) (7)(C) described his experience with (b) (6), (b) (7)(C) , "Under (b) (6), (b) (7)(C) , I felt that I was -- that I was more than marginalized. I was actually being pushed to the side and so I had meaningless work. I certainly did not feel appreciated and there was no work to do and nobody really caring."
- (b) (6), (b) (7)(C) , the Transition Lead for (b) (6), (b) (7)(C) , recalled that (b) (6), (b) (7)(C) began ignoring him after a particular incident. He explained. "...he (b) (6), (b) (7)(C) ] said something like, uhm, 'You're a GS15. You should know how to do this. Why am I telling you how to do this?' That type of thing... and then, you know, our -- we pretty much -- it was very rare that we had any collaboration thereafter... And I'm one of the key people in this program, so it doesn't make sense to me."
- (b) (6), (b) (7)(C) , the former Transport lead, had a one-on-one meeting with (b) (6), (b) (7)(C) prior to his taking the PM role. However, according to (b) (6), (b) (7)(C) , two or three days after (b) (6), (b) (7)(C) became PM, he directed his DPM, (b) (6), (b) (7)(C) , to relieve (b) (6), (b) (7)(C) of the Transport lead position. (b) (6), (b) (7)(C) recalled, "-- so when -- when (b) (6), (b) (7)(C) told me all this stuff that (b) (6), (b) (7)(C) wanted to -- wanted basically to relieve me, I was quite shocked... I would've thought that he would've talked to me about something when we had the one-on-one, but he -- but he didn't. So, I was -- I was quite, quite, quite perplexed, you know." (b) (6), (b) (7)(C) advised (b) (6), (b) (7)(C) that (b) (6), (b) (7)(C) thought that the Transport product should have been delivered months ago. In response, (b) (6), (b) (7)(C) wondered, "And I was like well, he had - he (b) (6), (b) (7)(C) ] didn't even talk to me

about any of this stuff. I could've -- I could have explained..."

- (b) (6), (b) (7)(C) was the (b)(6), (b)(7)(c) when (b)(6), (b)(7)(c) was stood up. He recalled, "...so when he (b) (6), (b) (7)(C) first - uh, had the change of command, he had meetings with all of the leads. Um -- but my meeting was cancelled and I never had a meeting with him."
- (b) (6), (b) (7)(C), (b)(6), (b)(7)(c) for Service Development at (b)(6), (b)(7)(c), was asked why his co-workers complained that (b) (6), (b) (7)(C) ignored them. He explained, "...cause (b) (6), (b) (7)(C) was like that."

(26) When (b) (6), (b) (7)(C) was asked why others had stated that he frequently cancelled meetings, he replied, "I don't know. Uh, I... I don't recall... I'm sure I had a reason. I rarely do anything without a reason, but uh, it... it certainly wasn't arbitrary and capricious... I mean I... I was scheduled typically from when I got up in the morning 'til when I got home at night and that was usually from about six o'clock in the morning 'til about eight o'clock at night. And uh, a lot of times meetings got cancelled because I got jerked around."

(27) Additionally, because of his desire to change the NGEN acquisition strategy plan, (b) (6), (b) (7)(C) did not believe that all of the meetings were needed. He explained, "Uh, I mean one, we made a rather large shift in rudder in the program when I got onboard. We went from uhm, what the previous Program Manager had deemed as executable uh, to an approved program... a new acquisition strategy. So, some of the meetings that... that we didn't have were meetings that were m... pushing for the old strategy, which I had already uh, determined was not executable, and so having as many would not necessarily have been fruitful..."

(28) (b) (6), (b) (7)(C) remembered (b) (6), (b) (7)(C) opining to her and (b) (6), (b) (7)(C) about certain individuals on the NGEN staff, "He just said they had no value. You know, it's time for them to move on." (b) (6), (b) (7)(C) recalled (b) (6), (b) (7)(C) identifying, (b) (6), (b) (7)(C), among others during this conversation.

(29) (b) (6), (b) (7)(C) confirmed (b) (6), (b) (7)(C) recollection and recalled the following NGEN staff as being on (b) (6), (b) (7)(C) ' "move on" list, "(b) (6), (b) (7)(C)

(b) (6), (b) (7)(C)

+ a few others."

(30) Both (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) were SPAWAR embedded employees. (b) (6), (b) (7)(C) was relieved of her position at PMW 205 in August of 2011 and moved to (b) (6), (b) (7)(C). (b) (6), (b) (7)(C) was relieved of his position at PMW 205 in January 2012, and also moved to PEO-EIS/PMW 270. (b) (6), (b) (7)(C) have either found positions outside of PEO-EIS or voluntarily retired. The others noted on the "move on" list are still at (b) (6), (b) (7)(C).

(31) (b) (6), (b) (7)(C)' 24 January 2011 email to (b) (6), (b) (7)(C) shows that he had concerns about staff size at the anticipated (b) (6), (b) (7)(C). He wrote, "It is my very strong preference that we not grow any. As you can - do not increase any CSS [contractor support services] or govies. If people attrite - no back fill without the three of us talking. I understand that Tim and Scott have the final call, but let's chat amongst ourselves first."

(32) (b) (6), (b) (7)(C) believed that the need to downsize was adequately communicated to the staff. He stated, "...eliminating waste is uh any Program Manager's probably number one task... I mean, I know that we talked about it at the change of command uhm, about gaining efficiency and doing things with, you know, doin the same with less."

(33) However, (b) (6), (b) (7)(C) did not want to be "arbitrary on the size of the staff", and decided to request an outside study even though money was a concern. A 25 February 2011 email from the Business Finance Manager (BFM), (b) (6), (b) (7)(C), states in part, "Second - (b) (6), (b) (7)(C) has made it plain that no "new hires" are to take place until he completes a manpower assessment. It is my understanding that he is going external to the existing organization to get that study completed (Gartner I think<sup>6</sup>). To that end he has told me to look for \$500K. I have advised him that pending the CR resolution/gov shut down/whatever on/about 4 Mar, both of his checkbooks are pretty thin."

(34) (b) (6), (b) (7)(C) confirmed that (b) (6), (b) (7)(C) was concerned about staff levels. She stated, "(b) (6), (b) (7)(C) felt very

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<sup>6</sup> We were not able to obtain a report on PMW 205 prepared by Gartner Inc. However, we did obtain a report from a company called Noblis. In any event, it is clear that certain organizational change management studies were requested.

strongly they were overstaffed. He paid Gartner to do a study, which they did. Uhm, and Gartner said well in... as far as our magic quadrant goes, you're right in the realm of normal. In fact you're on the low end of normal for the dollar value in the scope of your program. Additionally,... I believe he asked either Deloitte or Mitre to look at that as well... and [they] pretty much said we were in the ballpark of a... a reasonably sized organization."

(35) (b) (6), (b) (7)(C) also recalled the study, but noted that it showed that the PMW should be bigger. He briefed the PEO, but recalled that they said, "you can't afford this... everything we did went through the PEO."

(36) Additionally, with the combining of the two PMWs, (b) (6), (b) (7)(C) observed that his supervisory responsibilities were double that of the predecessor PMs. He explained that (b) (6), (b) (7)(C) just supervised NGEN, "(b) (6), (b) (7)(C) had NMCI/CoSC. And I had both."

(37) Contributing to his supervisory responsibilities was the organizational structure of the former PMW 210 NGEN office. Under (b) (6), (b) (7)(C) all the NGEN Integrated Product Team leads reported directly to the PM.

(38) According to (b) (6), (b) (7)(C), (b) (6), (b) (7)(C) desire to limit the number of direct reports to him was mentioned early on in his tenure. She stated, "I think he mentioned it at stand up. Uh, various, you know, I don't remember what all meetings we had. We used to have a lot more meetings and when he came on we had a lot less meetings, but I think it was pretty clear to everyone in the organization and for those of us that were working on organizational design, which was me and (b) (6), (b) (7)(C), uhm, that he wanted two or three direct reports. N... not nine, 10 or 12."

(39) (b) (6), (b) (7)(C) stated that the former NGEN's staff's reaction to the change in reporting was negative. He explained, "They all still wanted to be level ones and they liked the fact that they had direct access to the PM and they felt like it was important that... that... that was the val... their value is to think uh, that they were direct reports to the PM. Well, as any good leader'll tell you, you... you... you... you dilute yourself when you get too big... too flat. When your direct sup... reports and everyone- You need to build some kind of structure to where there's a... a manageable number of people that are

direct reports and then under them they have a manageable number of direct reports and so on. Uhm, I think they felt like uhm, because they no longer they... they... they didn't appreciate the size of the program office after it merged and quite frankly, the PEO did a... a... I... I... I think they could've done a better job of preparing the workforce."

(40) (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) took over supervising the staff. (b) (6), (b) (7)(C) recalled that organizational changes began approximately a month or two after (b) (6), (b) (7)(C) came on board, but the initial communications were mostly verbal. (b) (6), (b) (7)(C) stated, "Eventually org charts were made and distributed, and the PM may have sent out an email, but the initial steps were mostly verbal."

(41) (b) (6), (b) (7)(C) denied that he intentionally ignored the NGEN staff. He said that he wanted them "to be happy. I wanted them to go where they felt they could best contribute to the United States Navy." In his efforts to boost morale he stated, "I continually told them the importance of the job they were doing. I had an open door policy. And I know as... as many allegations says I isolated myself, which I absolutely didn't. I was always available when I was available. Alright? I mean, I have a boss too. I have a lot of bosses. So, sometimes I wasn't available."

(42) (b) (6), (b) (7)(C) also stated that his actions were "never about the people. It's always about the job. It's a very dispassionate thing. You have to set up an organization with the right functions. So, I was trying to figure out where the functions were best suited. And then you look at the people you have and see how they can best fit within the organization t... uh, organizational structure. It was a huge change. We're talking 400 and change, people."

(b) (6), (b) (7)(C) allegedly acted dishonestly and disrespectfully when he covertly listened in on a staff meeting to which he was not invited.

(43) Shortly after the merger of PMW 200 & 210, the morale of the former NGEN staff rapidly declined. (b) (6), (b) (7)(C) recalled talking to (b) (6), (b) (7)(C) about the situation, he said, "seeing that we had a morale problem, he and I spoke about this in detail and he indicated to me that he wanted to understand the reasons and do what he can to help the situation and perhaps do what he can to change it. So after -- that discussion led us

to a plan where I would gather the NGEN team up at the Navy Yard and we would hold a meeting where I would hear and understand as his Deputy what these issues were and why they felt the way they felt and that -- and also to communicate to them that we, the leadership team, would do everything we can to alleviate and fix the things and make it better. So that's why that meeting was arranged as our plan to first understand what the issues are, and I agreed to help him with that."

(44) When (b) (6), (b) (7)(C) was asked why the meeting attendees were not informed that (b) (6), (b) (7)(C) was listening to the meeting via telecom. He explained "Well nobody knew at the time that that was happening. We were in the conference room at the main conference room in our floor and a dial-in was set up to allow for some of the NGEN people who were not on the floor that day to be able to participate, but nowhere in that plan was there an understanding or knowledge that he would dial in, including for me."

(45) (b) (6), (b) (7)(C) stated that (b) (6), (b) (7)(C) told him that he had been listening, but was unaware of his presence until the meeting was over. He stated, "He (b) (6), (b) (7)(C) ] told me... No, I did not know until afterwards. I don't know why he even had the dial-in number. So all throughout the meeting when I was engaged with my team and generating an open and honest discussion -- and I wasn't there to judge them myself. I was just there to hear what the issues are and try to communicate a sense of value and confidence to them that we took this seriously and that we are going to try to do everything we can to make it better for them. That was sort of what I -- I was a facilitator, if you will on that, not solve anything or judge anything. But we thought we were doing it in complete confidence and that didn't turn out to be the case, but you know that's sort of what happened."

(46) (b) (6), (b) (7)(C) also recalled, "I documented all the things that were said in that meeting... and I put them in an email to him and I said, you know, and without naming names, that is, but clearly I guess he had dialed in and could hear -- could hear some of it, I guess."

(47) (b) (6), (b) (7)(C) also heard that (b) (6), (b) (7)(C) had been listening into the meeting. She stated, "Oh, it is true, because there's no question of that. So right after the meeting, maybe within 24 hours is that we heard that (b) (6), (b) (7)(C) was listening in." Initially, she believed that it was probably a rumor, but subsequently she recalled, "... and then

after about 24 hours, maybe 48 hours, (b) (6), (b) (7)(C) himself sent out a e-mail saying he was listening in."

(48) (b) (6), (b) (7)(C), did not have a copy of the email, but "definitely" recalled reading it. She also remembered part of its content. She said, "It was like, kind of like, 'I was listening in, I understand you have concerns, but we're under a time crunch, and doing the best I can.' I think it was along those lines."

(49) (b) (6), (b) (7)(C) did not recall the specific meeting. However, when he was asked if dialing in covertly was something he would do, he stated, "I don't know." He stated that he had called into meetings "lots of times" when others in the room didn't know that he had dialed in. He said, "Lots of people do it. People do it all the time." He said that he didn't think doing this is dishonest. However, he later qualified his remarks by stating, "I consider it dishonest if they ask you who's on the line and you don't answer. I guess uh, that's dishonest."

(50) (b) (6), (b) (7)(C) was asked if these events happened as alleged, would he consider it dishonest. He responded, "I don't know. I would... ..consider it treasonous and mutinous. And if the Deputy didn't tell me he was doing it, and say 'Hey, uh, this- so, stay away- we're gonna vent'... I mean that- that- that- that reeks of undermining the Chain of Command."

(b) (6), (b) (7)(C) allegedly unfairly threatened to not renew (b) (6), (b) (7)(C)' orders in retaliation for comments he had made at the (b) (6), (b) (7)(C) meeting.

(51) (b) (6), (b) (7)(C) was the NGEN Transition Lead for PEO-EIS/PMW 205. He recalled attending the meeting called by (b) (6), (b) (7)(C) concerning morale. He remembered being opinionated, "I was opinionated, and I can't even remember what I said now in that meeting, but maybe people thought that's why I was targeted because I was one of the people that spoke up." He said that there were rumors that (b) (6), (b) (7)(C) had listened in on the meeting, but did not know if he actually did.

(52) (b) (6), (b) (7)(C) recalled a subsequent incident in approximately August of 2011 involving (b) (6), (b) (7)(C). He said, "...it was kind of that time of year where you submit your required, Reserve requirements... I checked with (b) (6), (b) (7)(C), who's our -- at that time he was kind of like our HR person,

administrative senior supervisor. I asked him the status of my orders, and he said (b) (6), (b) (7)(C) was essentially holding -- had not made a decision, and he was holding up my request... to stay another year."

(53) In response to this news, (b) (6), (b) (7)(C) arranged a meeting with (b) (6), (b) (7)(C). He explained, "... I met with him one-on-one in his office over in Crystal City. So at that time during the meeting, that's when really -- he really kind of surprised me... He said, (b) (6), (b) (7)(C), I heard that you were undermining me.' And I said, 'What do you mean?' So he kind of -- he said -- essentially he said I was kind of undermining his authority or his leadership. And I told him, I've never really -- because at that time there was kind of rumblings about (b) (6), (b) (7)(C) and his leadership style. And I said, 'I've never said anything about you.'... He said, 'I know (b) (6), (b) (7)(C) has said things about me.' And they were actually classmates at the Academy, the Naval Academy. He said, 'I'm disappointed in her, but you also have been undermining me.' I said, 'No, I haven't, sir. I haven't said anything about you.' So that was the first thing he said was, 'You're undermining me.'... ..he said, 'You're not living up to your rank', and essentially he said, 'You're not doing your job. You're not doing what you're supposed to be doing.' So he kind of berated me, and then said, 'I was underperforming, I wasn't essentially living up to my rank and that I was undermining his organization.' Those were kind of the criteria. And I responded, 'That's not true, sir. I've done' - then I started rattling off my accomplishments..."

(54) (b) (6), (b) (7)(C) continued "So after I kind of rattled off all my accomplishments and what I'd done, he said finally, 'Well, I like your passion.' Because at this time, I was kind of pissed. I think he essentially said, 'I'll keep you, but I need you to kind of do these things and fill in the gaps, fill in the 'white space.' He always uses the term 'white space.' but I didn't really have any confidence."

(55) (b) (6), (b) (7)(C) was unsure if the comments he had made at the (b) (6), (b) (7)(C) meeting had prompted (b) (6), (b) (7)(C)' comments. (b) (6), (b) (7)(C) stated, "Yeah, I mean, it could have, but I don't even think my comments -- the comments I made were like negative. They were just, again, kind of constructive comments... how to do business better."

(56) (b) (6), (b) (7)(C) did not consider (b) (6), (b) (7)(C) behavior abusive, but did believe it was poor leadership. He

stated, "I mean, being in the Navy 27 years, some people -- my tolerance is pretty high. Some people may have considered it abusive. I think it was more poor leadership. I was disappointed, the fact that he didn't approach me. He took the word -- I don't know who he heard that I was undermining him. He never addressed me, and it was just part, kind of reflected his poor leadership style."

(57) (b) (6), (b) (7)(C) preferred to stay with the program, but because of this conversation decided to leave because "I saw the writing on the wall, and I didn't have confidence in (b) (6), (b) (7)(C). And essentially he also said, too... -- that he wasn't going to renew the -- the Reservist orders, that he didn't have confidence in the Reservists, that we were kind of underperforming -- not just myself but the Reservists in general. I didn't think he thought they were contributing to his organization or asset to his organization. So --"

(58) (b) (6), (b) (7)(C), (b) (6), (b) (7)(C) technical specialist was a member of the Transition team lead by (b) (6), (b) (7)(C). Upon her return from TDY in 2011, she recalled hearing rumors of the meeting. She stated, "I went away to PMT 352B, and when I came back in April of 2011, (b) (6), (b) (7)(C) uhm, (b) (6), (b) (7)(C) had been there for February, March, April. Uh, three months maybe, and during that timeframe a lot of stuff happened. Uh... uh, I guess the best way I could put it, it was like uh, it was supposed to be a merging of two o... offices. What used to be PMW 200... Yeah. Uh, all this kinda stuff is stage for the climate 'cause it seemed like there was no love for the people that were at the Navy Yard for lack of a better word... And I was not there. So, what I heard was all of a sudden (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) got into it. They had a verbal altercation in (b) (6), (b) (7)(C) ' office. (b) (6), (b) (7)(C) ' door was open and allegedly (b) (6), (b) (7)(C) said words to the effect of I don't even know why I'm paying for you 'cause you're worthless and I don't think you're contributing anything and I might as well just let you go. I was not there... But, the secretarial staff and the... and the contractor staff that were there that were outside the door, word spread very quickly and (b) (6), (b) (7)(C) himself even eluded to the conversation... So, yeah, he told us in uh, one of our meetings - one of our staff meetings. Government only. It was (b) (6), (b) (7)(C), me, (b) (6), (b) (7)(C)<sup>7</sup>, and him. And he basically was like uh,

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<sup>7</sup> (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C). Neither could recall anything about this event.

let's just say there was no love lost between the two of them, so.

(59) (b) (6), (b) (7)(C) recalled the following about the discussion with (b) (6), (b) (7)(C). He stated, "some people who had some loyalty to the Chain of Command told me that uhm, (b) (6), (b) (7)(C) was uh, was... it was not in favor of the program vision and was actively trying to sabotage it... Uh, not supporting the... the things that I needed them to support. Like Transition now. Like learning how the current network works, so that we could take over uh, the operations during transition to NGEN."

(60) (b) (6), (b) (7)(C) could not recall who provided him the information about (b) (6), (b) (7)(C)' disloyalty or any specific information about their conversation. (b) (6), (b) (7)(C) denied that he specifically targeted (b) (6), (b) (7)(C) due to the rumor alleging his disloyalty. (b) (6), (b) (7)(C) stated, "I stopped funding all ADSWs [Active Duty Special Work] because they were expensive and I didn't feel like I was getting... just to quite frankly, save money..."

(61) When (b) (6), (b) (7)(C) was advised that he ultimately renewed (b) (6), (b) (7)(C)' orders, (b) (6), (b) (7)(C) stated, "I clearly hadn't made a decision 'cause if I had made a decision, I wouldn't have later funded them. I probably was questioning whether or not I should and I probably had a conversation. And again, I don't recall, but I will say uh, knowing me I would have probably brought him in and said are you going to be a team player? Because if you're not, I'll go a different direction. But, if you are, I'll... we'll... we'll keep goin'."

(62) (b) (6), (b) (7)(C), former (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) stated that he left his position at PMW 205 in April 2011 and took a position at PEO-EIS. During his interview, he did not recall any incident concerning the renewal or non-renewal of (b) (6), (b) (7)(C)' orders. However, (b) (6), (b) (7)(C) subsequently pulled the ADSW request documents and recalled, "I prepared all of them for PMW 205 leadership and sent them to (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) for review. I did not receive concurrence on the ADSW request for (b) (6), (b) (7)(C). I recently lost most of my e-mail archives so I am recalling from memory." (b) (6), (b) (7)(C) provided the approved renewal orders for (b) (6), (b) (7)(C) among other. (b) (6), (b) (7)(C) orders were not among those provided.

Allegedly (b) (6), (b) (7)(C) acted with cruelty when he told (b) (6), (b) (7)(C) that he did not need her or the Strategic Planning function.

(63) During early 2011, (b) (6), (b) (7)(C) was working Strategic Plans at PMW 205. (b) (6), (b) (7)(C) was her supervisor. During this timeframe, (b) (6), (b) (7)(C) described her emotional state as fragile as she was undergoing treatment for breast cancer.

(64) (b) (6), (b) (7)(C) recalled, that one evening while her supervisor was on leave, out of frustration, she complained to (b) (6), (b) (7)(C) ' executive assistant, about (b) (6), (b) (7)(C) ' leadership and the direction that the PMW was taking.

(65) According to (b) (6), (b) (7)(C), the next day she was called into a counseling session with (b) (6), (b) (7)(C), PM, and (b) (6), (b) (7)(C) DPM. Upon reflection, (b) (6), (b) (7)(C) believed that she deserved the counseling session based on the comments that she had made the night before to (b) (6), (b) (7)(C) but could not recall specifically what was said. (b) (6), (b) (7)(C) recalled being uncomfortable without her supervisor present, but did not tell the PM or DPM this.

(66) (b) (6), (b) (7)(C) stated, "It was not a long conversation. The (b) (6), (b) (7)(C) was blunt and his voice was raised, but I don't recall being shouted at nor did he curse at me. Towards the end of the meeting, I expressed my frustration with not having clear direction or guidance with regards to the Strategic Planning work I had been previously performing. (b) (6), (b) (7)(C) told me that I should [go] down to the waterfront (meaning our customers) and find something to do. I did not infer that I was being fired just that the position that I was hired for was no longer desired. As a result of realizing the program was going in a different direction and could no longer use my particular expertise, I sought employment elsewhere and now have a position at DHS [Department of Homeland Security]."

(67) (b) (6), (b) (7)(C) recalled (b) (6), (b) (7)(C) ' remarks at the meeting, "Yes, it was like one of his first two weeks, and I was... it was all I could to just keep my mouth shut and not let my jaw fall on the floor. "I don't need any strategic vision. I don't need any change management. I don't need you. Go back to your desk... Fill up the white space. Find something to do."

(68) (b) (6), (b) (7)(C) recalled that she was very upset when she left the meeting and many co-workers saw her distress. Shortly afterwards, (b) (6), (b) (7)(C) called her supervisor, (b) (6), (b) (7)(C)

(69) (b) (6), (b) (7)(C) remembered the phone call. He stated, "...it was during spring break that I was in fact on leave with my family. I was vacationing in New York City... I was in a diner in Manhattan when I got a call from (b) (6), (b) (7)(C) literally emotionally broke down crying on the phone... I mean to the point that she couldn't even talk on the phone with me. She was calling me and telling me what had transpired in his room, that how he, you know, wanted her to stop everything, and this was no value added. And he had told her, as she had told me, that if this wasn't good enough that she should just leave... And -- so (b) (6), (b) (7)(C) told me this over the phone and of course I am 250 miles away in New York City on vacation -- in this diner and she was so broken down and I tried to realize what had just happened. All I could do was I told her to go home, that I was putting her on leave, that she could go home and we would see what we could do about this later."

(70) (b) (6), (b) (7)(C) explained that this case was not unusual. He recalled there were many instances of things (b) (6), (b) (7)(C) did and/or said to some of the NGEN staff and, "I became the person that had to deal with the aftermath of that as their direct first-line supervisor..."

(71) (b) (6), (b) (7)(C) was asked if it was appropriate to counsel (b) (6), (b) (7)(C) without her supervisor present. He responded, "...if (b) (6), (b) (7)(C) calls you into his office, do you have to have (b) (6), (b) (7) or uh, (b) (6), (b) (7)(C) [SPAWAR Inspector General] with you?" [Investigator: She should be apprised of the situation... this is a civilian workforce.] (b) (6), (b) (7)(C) stated "Not appri- I didn't know... so, (b) (6), (b) (7)(C) called me couple year... a year ago, year and a half ago and said I was absolutely right to do what I did."

(72) (b) (6), (b) (7)(C) described his behavior during his meeting with (b) (6), (b) (7)(C). He said, "I didn't raise my voice. She said I didn't swear at her. She said I was professional. She told me that... that I did everything right and that she was wrong." [Investigator: Was she visibly upset at the time?] (b) (6), (b) (7)(C) replied, "Maybe. I don't know. I don't remember."

(73) (b) (6), (b) (7)(C) was asked to explain what he meant by his direction to "fill in the white space". He stated, "Means that you... there's uh, there's so much to do and there's so much space in between those things which are being done and those things which need to be do... done, that sometimes you have to look and see where the issues are that need to be addressed. You shouldn't have to be told to go do some things. You should be able to figure those things out for yourself. That's what we pay GS15's to do. Fill in the white space. It's... uh, it's... it's... ..not a negative thing. It's... it's in fact, it's a positive. It's uh, look, you can do this. You don't need my help to tell you where there's things that need to be worked on. But, there's plenty."

(74) (b) (6), (b) (7)(C) stated that he considered his inability to correct the morale issues at PMW 205 a failing. He explained, "I view it as a- as a- as a failing. I- I do. I wanted everybody to like where they were working and like what they were doing. There is no more important job than the job they do. And quite frankly, I did tell them that uh, almost any time I was in a room. It is the most important program in the Navy. Period. Dot. And I can tell you that because when it doesn't work, my phone used to ring. I never thought that as a Program Manager I would get to deal with the Secretary of the Navy, with the CNO, with the Commandant on the Marine Corp. Alright? I just wanted to be a stupid Program Manager and keep my head in my hole. When the network doesn't work, the Navy doesn't work. That's how import- it is the only weapon system that touches every sailor, Marine, civilian under the department of the Navy. It's the only one. Most other weapon systems will only affect the fraction, a small fraction of our forces. The network affects everyone. ...I mean that was exciting to me. I- I wanted to infuse that into everybody... ..I think because they viewed more how they were gonna accomplish it as important that they were more concerned with the solution than the problem. I want people who are concerned with solving the problem regardless of the solution. Whether it's theirs or somebody else's, you gotta own the problem, not the solution. And I think they owned the solution too much and it hurt when somebody said we're not goin' that way, but- but we did all this work. I know. And it was great work and I understand this is change and change is hard."

**b. Discussion and Analysis.**

(1) The allegation concerning (b) (6), (b) (7)(C)' behavior fit certain characteristics of bullying such as criticizing/threatening workers concerning their attitudes or mistakes, and shunning those personnel he did not view as valuable to the organization. His actions also demonstrate a lack of moral attributes necessary for an officer to effectively command his staff as noted by Article 133 of the UCMJ.

(2) Prior to January 2014, the DoD did not have a specific policy that addressed bullying or a hostile environment exclusive of sexual harassment. However, while issued subsequent to the subject events, the issuance of DoDI 1438.06 clearly demonstrates that the DoD now recognizes the harm and danger that these types of behaviors pose in the workplace, and that immediate action must be taken when these behaviors are exhibited.

(3) (b) (6), (b) (7)(C) recognized that he had been given the role of PM over two distinct groups of people, PMW 200 and PMW 210, who in his words "quite frankly, did not like each other." However, he chose to spend the majority of his time at the former NMCI offices.

(4) (b) (6), (b) (7)(C) had a perfectly rational and logical explanation as to why he spent the majority of his time at the former PMW 200/Crystal City vice PMW 210/WNY. While we have no evidence that his actions were motivated by prejudice, he was unfair to the staff at the former NGEN program office in doing so. He knew that the two organizations did not like each other. He knew that no organization change management plan was in place to facilitate the consolidation. Given these two factors alone, a reasonable person should have anticipated the anxiety that his physical absence would create with the staff at the former PMW 210. When major change is occurring leadership's involvement and presence is key. Whatever the obstacles: the demands of his bosses, logistics, or his lack of a personal vehicle, (b) (6), (b) (7)(C) had a duty to insure equal and fair treatment of each of the PMWs.

(5) We received no witness accounts that described incidents where (b) (6), (b) (7)(C) yelled or cursed at anyone. However, the witness testimony indicates a pattern by (b) (6), (b) (7)(C) to shun those individuals who in his view (i) performed a function that was not valued or (ii) were underperforming. (b) (6), (b) (7)(C) believed that his role as PM was to focus only on the job function vice ensuring fair and

honest treatment of his staff, "...it was never about the people. It's always about the job. It's a very dispassionate thing. You have to set up an organization with the right functions."

(b) (6), (b) (7)(C) apparently forgot that people performed the functions.

(6) Witness accounts support that (b) (6), (b) (7)(C) covertly and dishonestly listened into the NGEN "venting meeting" facilitated by (b) (6), (b) (7)(C). While we do not believe that "venting" is a beneficial business tool (see the Eighth Allegation para. 10. a. (12) and (13)), the wishes of the organizer, Dr. Tanju, should have been honored. News of (b) (6), (b) (7)(C) dishonesty further eroded his credibility with the NGEN staff and his leadership role.

(7) Witness testimony confirms that (b) (6), (b) (7)(C) meetings with (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) occurred. It is unknown if (b) (6), (b) (7)(C) hesitation in renewing (b) (6), (b) (7)(C) reserve orders was based on what he covertly heard (b) (6), (b) (7)(C) say at the (b) (6), (b) (7)(C) meeting. However, how (b) (6), (b) (7)(C) obtained the information is not important in these instances. What is important is why and how (b) (6), (b) (7)(C) reacted to the criticism. These incidents show that (b) (6), (b) (7)(C) seemed to be especially concerned with anything that in his view undermined the chain of command. Criticisms are merely observations which may or may not have merit. When confronting the critic, (b) (6), (b) (7)(C) was still obligated to act with honesty and fairness vice harshly discounting the individuals' job position or value to the organization. People in part define who they are by what they do. To cavalierly advise someone that the job they do is not needed is cruel, as shown by (b) (6), (b) (7)(C) reaction, and (b) (6), (b) (7)(C) decision to leave. (b) (6), (b) (7)(C) unfair and cruel management style unfortunately set the tone for the other managers and leads at PEO-EIS/PMW 205.

(8) We do not doubt that with the combining of the two program offices there was a need to (i) eliminate functional duplication/staff size, (ii) limit the number of his direct reports, and (iii) remove or reassign those individuals who were not performing or whose skill set did not suit the position. However, to make these changes without laying the leadership groundwork of fairness, honesty and clear communication was disastrous and resulted in low morale and numerous HR issues. We do not doubt that (b) (6), (b) (7)(C) knew how to get results as shown by the award of the NGEN contract, but at what price? The human capital cost was high.

(9) Significantly mitigating (b) (6), (b) (7)(C) actions is the fact that an organizational change management plan was not in place, and should have been in place prior to (b) (6), (b) (7)(C) taking over as PM of the combined organization.

(10) The allegation that (b) (6), (b) (7)(C), USN, former (b)(6), (b)(7)(c), during the period Oct 2010 through September 2011 treated certain subordinates unfairly and acted dishonestly in violation of the Article 133, Uniform Code of Military Justice (UCMJ), Conduct unbecoming an officer and a gentleman is substantiated.

**c. Conclusion:** This allegation is **substantiated**.

**d. Recommendation:** Forward to COMSPAWAR for action as deemed appropriate.

**e. Disposition:** Pending

**4. Second Allegation:** That (b) (6), (b) (7)(C), USN, former (b)(6), (b)(7)(c) behaved abusively and disrespectfully toward (b)(6), (b) (6), (b) (7)(C) SPAWAR Code 55030, during a meeting in approximately May/June 2011 in violation of U.S. Navy Regulations, Chapter 10, Section 2. Authority, Paragraph 1023, and Article 92, UCMJ, Failure to obey order or regulation. **Substantiated**.

**a. Facts:**

(1) U.S. Navy Regulations, Chapter 10, Section 2., "Authority", paragraph 1023, states, "Persons in authority are forbidden to injure their subordinates by tyrannical or capricious conduct, or by abusive language."

(2) Article 92 of the Punitive Articles of the Uniform Code of Military Justice (UCMJ) states in part,

"Any person subject to this chapter who--

(1) violates or fails to obey any lawful general order or regulation;

(2) having knowledge of any other lawful order issued by any member of the armed forces, which it is his duty to obey, fails to obey the order; or

(3) is derelict in the performance of his duties;

shall be punished as a court-martial may direct."

(3) The Manual for Courts Martial, Part IV, Punitive Articles para. 16 Failure to obey order or regulation states in part,

"b. *Elements.*

(1) *Violation of or failure to obey a lawful general order or regulation.*

(a) That there was in effect a certain lawful general order or regulation;

(b) That the accused had a duty to obey it, and

(c) That the accused violated or failed to obey the order or regulation."

Additionally, in part c. it states,

"General orders or regulations are those orders or regulations generally applicable to an armed force which are properly published by the President or the Secretary of Defense, of Homeland Security, or of a military department..." and

"Knowledge of a general order or regulation need not be alleged or proved, as knowledge is not an element of this offense and a lack of knowledge does not constitute a defense." U.S. Navy Regulations, Chapter 1, Section 1., Paragraph 0101, "United States Navy Regulations shall be issued by the Secretary of the Navy with the approval of the President." In 1981, this provision was amended to eliminate the requirement for presidential approval.

(4) Subsequent to this action, the DoD issued DoD Instruction (DoDI) 1438.06 *Workplace Violence Prevention and Response Policy* dated 16 January 2014. It states in part, "3. POLICY. It is DoD policy that:

a. DoD Components work with employees to maintain a work environment free from violence, threats of violence, harassment, intimidation, and other disruptive behavior. All employees are responsible for promoting a safe work environment.

b. Violence, threats, harassment, intimidation, and other disruptive behavior will not be tolerated in the workplace; all reports of incidents will be taken seriously and will be dealt with appropriately.

c. Those who engage in such behavior may be:

(1) Immediately removed from the premises.

(2) Denied re-entry pending completion of an appropriate investigation.

(3) Subject to removal from federal service, criminal prosecution, or both.

d. DoD employees will comply with the workplace violence prevention and response policies of their organizations..."

(5) DoDI 1438.06 *Workplace Violence Prevention and Response Policy* dated 16 January 2014 also contains a definition of workplace violence at its Glossary, Part II, Definitions. It states, "workplace violence. Any act of violent behavior, threats of physical violence, harassment, intimidation, bullying, verbal or non-verbal threat, or other threatening, disruptive behavior that occurs at or outside the work site."

(6) (b) (6), (b) (7)(C) is currently the (b) (6), (b) (7)(C) for the DoD Healthcare Management System Modernization. He is the former (b) (6), (b) (7)(C) for the NGEN Acquisition for (b) (6), (b) (7)(C). While at PMW 205, his (b) (6), (b) (7)(C) (b) (6), (b) (7)(C)). He was recently promoted to (b) (6), (b) (7)(C)

(7) (b) (6), (b) (7)(C), (b) (6), (b) (7)(C), was previously embedded in (b) (6), (b) (7)(C) as the (b) (6), (b) (7)(C) for the Test and Evaluation (T&E) team.

(8) In approximately April 2011, (b) (6), (b) (7)(C), PM, had asked PMW 205 Contracting Officer, (b) (6), (b) (7)(C) to begin looking at the costs associated with the various support contracts being used on the NGEN program. Attention became focused on (i) a subcontractor, Syzygy that was supporting the T&E IPT, and (ii) the alleged lack of progress that the T&E IPT was making.

(9) In approximately May/June 2011 during a weekly NGEN team meeting, witnesses recalled that a heated discussion ensued between (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) concerning the progress being made by the T&E IPT.

(10) (b) (6), (b) (7)(C) recalled that (b) (6), (b) (7)(C) became irate. (b) (6), (b) (7)(C) said, "...he (b) (6), (b) (7)(C) got a little irate... he was talking about T&E... Testing and Evaluation 'don't know what they're doing.' And uh, so, I said it was, uh, something like... 'We were given direction by... (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) was... the chief engineer uh of whom we fell under. And he (b) (6), (b) (7)(C) was sitting across the room and... and... (b) (6), (b) (7)(C) was directing his... frustration at T&E; and I told him uh that (b) (6), (b) (7)(C) was the person who uh gives us our direction... and you know, we were

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<sup>8</sup> The individual's name is (b) (6), (b) (7)(C).

doing exactly what we were told. And he, and then he (b) (6), (b) (7)(C) kept going on, and on, and on, about it, and I just uh - uh seemed frustrated. And he said to me, well, don't you sit over there and be -- and seem like you're frustrated. Uh and I -- and all I said was, 'Okay, okay, can we just move on?'... And then that's when he got irate and said, 'Well, this is the reason, you are the reason that... this program is... where it is or -- or this is the reason we're -- we're having... these problems' -- or something like that. I don't know, in front of the group and, again, I said, 'Uh, can we just, okay, Commander, can we just move on?' Uh, and then he said something as -- I can't remember, but it was some irate thing, and Um, he just went on and on. So, yes, uh on a -- I didn't think that was -- I don't know if I consider that abusive, just him being out of control and letting his emotions uh get to him. I -- I -- I -- I didn't think anything of it, you know. So... But that was the incident... The only incident I had with him."

(11) (b) (6), (b) (7)(C) the T&E lead was not present at the meeting, but subsequently heard about it. (b) (6), (b) (7)(C) recalled that (b) (6), (b) (7)(C) had a very strong reaction to the incident which (b) (6), (b) (7)(C) shared with her. She stated, "I heard... that this man (b) (6), (b) (7)(C) ] went off screaming and hollering at (b) (6), (b) (7) and you know, (b) (6), (b) (7) told me, he said, '(b) (6), (b) (7)(C)', it just took everything. All I could do was think about my parents, think about my wife, think about my children and that's the only thing that kept me under control.'"

(12) (b) (6), (b) (7)(C) stated, I... I don't remember specifics 'cause it ha... it happened a while back, but uhm, he (b) (6), (b) (7)(C) ] didn't agree with the approach of what (b) (6), (b) (7)(C) was... was saying and uhm, and then it became very heated.

(13) When (b) (6), (b) (7)(C) was asked if there was swearing, she said, "That I don't remember, but it was raised voices and it started to be shouting. [Investigator: From both people?] Mostly by (b) (6), (b) (7)(C) - uh, and then I think (b) (6), (b) (7) was just, you know, reacting back... It was just very loud and uh, a lot of folks heard it..."

(14) (b) (6), (b) (7)(C), former (b) (6), (b) (7)(C) stated that she was in the subject meeting. She stated, "I observed -- uh -- (b) (6), (b) (7)(C) unleash on -- uh -- (b) (6), (b) (7) ... in -- uh -- a meeting once. And -- uh -- I thought it was -- uh -- abusive. But there again -- um -- you know, (b) (6), (b) (7)(C) -- maybe he was under pressure from -- uh -- from the (b) (6), (b) (7)(C), but -- uh -- uh

-- I -- I felt -- uh -- really bad for (b) (6), (b) (7) ... It was very embarrassing." (b) (6), (b) (7)(C) did not recall if (b) (6), (b) (7)(C) was swearing.

(15) (b) (6), (b) (7)(C), former (b) (6), (b) (7)(C) confirmed that he too attended the subject meeting. He recalled that "it wasn't pretty" and described (b) (6), (b) (7)(C) behavior as "screaming" and "unprofessional" towards (b) (6), (b) (7)(C). He stated, "...he was yelling. I mean it was no, uh, question about it. I mean even outside of a conference room I'm sure people can hear..." However, (b) (6), (b) (7)(C) did not recall (b) (6), (b) (7)(C) using any profanity.

(16) (b) (6), (b) (7)(C) stated that (b) (6), (b) (7)(C) behavior towards (b) (6), (b) (7)(C) was unpleasant to witness, and that others present were uncomfortable.

(17) (b) (6), (b) (7)(C) did not recall the subject meeting, but did recall that he had discussions with the Test and Evaluation Team and called into question the large sums of money being spent and the lack of clear deliverables that were to be produced by its subcontractor, Syzygy.

(18) (b) (6), (b) (7)(C) stated, "I've been in the Navy for 29 years now... I've never been out of control and irate." However, he offered, "there may have been an instant where my v... my voice was raised, but there was not an incident where I cursed anyone out."

(19) In explanation of why witnesses may have viewed his behavior as abusive, (b) (6), (b) (7)(C) offered, "I already speak loudly. And so a lot of people confuse me speaking loudly as me being angry and... I'm typically not angry... you don't survive on six ships by holding grudges... against people, so there was never anything personal in any interaction that I had..."

(20) (b) (6), (b) (7)(C) was asked if this was the only meeting where (b) (6), (b) (7)(C) behaved in this manner, (b) (6), (b) (7)(C) responded, "No. I mean he did it to me too... he have a tendencies to do that."

(21) (b) (6), (b) (7)(C) was then asked if he was possibly misinterpreting (b) (6), (b) (7)(C) intent due to his naturally loud voice, (b) (6), (b) (7)(C) said, "Well, he like to show his authority... [when] he wanna emphasize his point or... displeasure or something isn't... timely [that] he receives, then he have a tendency to

scream out. But, the scream out, you know, loudness... he like to do it in the public. He likes to have a large group there when he like to... say that."

(22) (b) (6), (b) (7)(C) continued, "what, uh, (b) (6), (b) (7)(C) received uhm, I had a same experience. (b) (6), (b) (7)(C) stood up and started challenging you, 'Why... [I'm] not providing... the uh, metrics chart that I promise?' Why? I told him, 'I'm still working on it.' He said that's not acceptable. So, that... ..was [in front of] the whole group... . ...he didn't go extreme as [with] uh- uh, (b) (6), (b) (7)(C) because uh, I uh, ask[ed] [at]... **(INAUDIBLE 12:25)** that meeting that I'd like to just step out because I didn't want- I know what he- how he- he's gonna behave if I state anything further. He's- he's gonna go escalate it. He wanna show to everybody- front of everybody that he has a superior over anyone that challenges him." (b) (6), (b) (7)(C) described (b) (6), (b) (7)(C) behavior as "a power play".

(23) Subsequent to his interview, (b) (6), (b) (7)(C) provided an email dated 19 Nov 2013 from former (b) (6), (b) (7)(C) member (b) (6), (b) (7)(C). In reflecting on this email (b) (6), (b) (7)(C) (C) stated, "I do not know if he was in the meeting where the alleged incident occurred but I do know he has inquired as to whether I have any positions available in my organization, and as the note below reflects wanted to engage me informally for a cup of coffee, lunch, social call, etc. Hard for me to understand why he (b) (6), (b) (7)(C) would want to engage or work for/with a person that unfairly treated the technical team/lead or held them to an unfair standard of performance/expectations. In addition, I have had well over 30 people from NGEN/NEN/PEO-EIS inquire about joining me in some capacity on my Program."

(24) (b) (6), (b) (7)(C) is currently an acquisition specialist for SPAWAR LANT Code (b) (6), (b) (7)(C) embedded in the Joints Chiefs of Staff. He is a former member of (b) (6), (b) (7)(C)'s Test and Evaluation team. When (b) (6), (b) (7)(C) was asked if he had experienced any abusive behavior while at PMW 205, he recalled a situation with (b) (6), (b) (7)(C). He explained, "There was a situation where I probably had a couple of conversations with, uhm, (b) (6), (b) (7)(C) trying to, uhm, you know, explain some things to him, and there was concerns that I had that I, you know, tried to communicate, and you know, some of those might have gotten a little, you know, a little lively. I wouldn't, you know, say, you know, we... he abused me or anything like that." (b) (6), (b) (7)(C) added that (b) (6), (b) (7)(C) "didn't necessarily use curse words." (b) (6), (b) (7)(C) said he stood his ground with (b) (6), (b) (7)(C)

(b) (6), (b) (7)(C), but believes that is in part why he was removed from the project.

(25) However, (b) (6), (b) (7)(C) saw his behavior differently. He stated, "I'm kinda glad you're doing the investigation aspect because I think too often we let it go and the individual thinks that he has right to do that and I think it's not right thing. So, I mean uh... uh, I... I don't know any other uh, person, but to me is uh... uh, he probably got away all this years he came scream and yar (SIC)[yell] professionally or non-professional environment, but it was okay long as he... his voice louder and uh, you know, but this case maybe uh, others just kinda blow him off like here's what it is, but uh, he probably continue that behavior even after... [he leave], I mean that's not the last of it, that's what I'm saying. Even late as uh, as uh... uh, early this year. Uh, you know he would have same behavior."

(26) The facts contained in paragraphs 3.a. (4), (5) and (6) concerning workplace bullying also apply to this allegation.

#### **b. Discussion and Analysis.**

(1) As a military member of the USN, (b) (6), (b) (7)(C) is required to comply with all U.S. Navy Regulations. Failure to comply with lawful regulations results in dereliction of duty.

(2) Chapter 10, Section 2. "Authority", Paragraph 1023, of U.S. Navy Regulations does not require a minimum number of abusive incidents to establish a violation. However, Mr. Dimoff, our referenced expert on workplace bullying, does define bullying behavior as recurring.

(3) The evidence supports that the abusive behavior directed at (b) (6), (b) (7)(C) appears to have been a one-time incident, vice a recurring pattern of behavior towards him. However, (b) (6), (b) (7)(C) observed that (b) (6), (b) (7)(C) had a pattern of singling out (c) individuals for alleged performance failures in front of others such as at meetings. Additionally, (b) (6), (b) (7)(C) experienced a "lively" conversation with (b) (6), (b) (7)(C). Their testimony suggests that (b) (6), (b) (7)(C) does have a pattern of yelling at subordinates in front of others. According to workplace bullying expert, Mr. Dimoff, this type of behavior is a form of bullying. Also, Mr. Dimoff asserts that we should be aware that if there has been one report of bullying there have been other unreported incidents.

(4) Again, while not in effect at the time of this incident, the issuance of DoD Instruction (DoDI) 1438.06 *Workplace Violence Prevention and Response Policy* dated 16 January 2014, demonstrates that there has been a significant shift in DoD policy/attitude towards this type of behavior. Now leadership is mandated to take all such incidents seriously and deal with them appropriately.

(5) The victim, (b) (6), (b) (7)(C) asserted that the abuse did not negatively affect him. He stated, "I didn't think anything of it." However his statement is contradicted by his team leader, (b) (6), (b) (7)(C), who recalled (b) (6), (b) (7)(C) stating that it "took everything... [to keep himself] under control." (b) (6), (b) (7)(C) described the event as "embarrassing", and "felt really sorry for (b) (6), (b) (7)(C)." Additionally, (b) (6), (b) (7)(C) believed that (b) (6), (b) (7)(C) actions that day made everyone present uncomfortable. Therefore, (b) (6), (b) (7)(C) wasn't the only victim of (b) (6), (b) (7)(C) inappropriate behavior.

(6) (b) (6), (b) (7)(C) did not recall the event, but acknowledged that there may have been an instance where his voice was raised. (b) (6), (b) (7)(C) also asserts that he has never been angry or irate, and did not intend anything personal in any of his interactions with people. However, the subject U.S. Navy Regulation and the attributes of workplace bullying do not require that the perpetrator's actions be intentional for a violation to have occurred.

(7) The three recollections of the event by the witnesses are consistent, and confirm that the abusive behavior as alleged did occur. Of equal importance is that the witness accounts were made a full two years after the incident which strongly suggests that (b) (6), (b) (7)(C) behavior during this incident was so out of the ordinary as to be memorable. Therefore, this discounts (b) (6), (b) (7)(C) argument that his voice is just naturally loud, and others may have misunderstood.

(8) The allegation that (b) (6), (b) (7)(C), USN, former (b) (6), (b) (7)(C) behaved abusively and disrespectfully toward (b) (6), (b) (7)(C), SPAWAR Code (b) (6), (b) (7)(C), during a meeting in approximately May/June 2011 in violation of U.S. Navy Regulations, Chapter 10, Section 2., Authority, Paragraph 1023, and Article 92, UCMJ, Failure to obey order or regulation is substantiated.

c. **Conclusion:** This allegation is **substantiated**.

d. **Recommendation:** Forward to COMSPAWAR for action as deemed appropriate.

e. **Disposition:** Pending

5. **Third Allegation:** That (b) (6), (b) (7)(C) , (b)(6), (b)(7)(c) (b)(6), (b)(7)(c) during the period Dec 2010 through May 2011 behaved unfairly and disrespectfully towards (b) (6), (b) (7)(C) , USN (retired) (hereafter referred to as (b) (6), (b) (7)(C) ), former (b)(6), (b)(7)(c) . (b)(6), (b)(7)(c) , and during a 21 August 2013 meeting was disrespectful toward (b) (6), (b) (7)(C) , Government and Operational Model (b)(6), (b)(7)(c) (b)(6), (b)(7)(c) in violation of DoN, Civilian Human Resource Manual (CHRM), Subchapter 752, section 7 and Appendix B. **Substantiated**.

a. **Facts:**

(1) The DON CHRM, Subchapter 752, section 7.f. notes in part, "Employees who fail to comply with (1) through (4) below may be subject to discipline under this subchapter. They are responsible for (1) Conducting themselves, both on and off duty, in a manner that will ensure that their conduct does not reflect adversely on the DON. ... (3) Following on the job rules."

(2) The DON CHRM, Subchapter 752, Appendix B Schedule of Offenses and Recommended Remedies, notes in part paragraph 1.b. Instruction for use of this schedule, "Consistent with DON policy in this subchapter, the schedule generally provides for a range of remedies (e.g., Reprimand to Removal) to provide management with flexibility in correcting conduct deficiencies... Miscellaneous Offenses... Disrespectful conduct, use of insulting, abuse or obscene language to or about other personnel."

(3) Subsequent to this action, the DoD issued DoD Instruction (DoDI) number 1438.06 *Workplace Violence Prevention and Response Policy* dated 16 January 2014. It states in part, "3. POLICY. It is DoD policy that:

a. DoD Components work with employees to maintain a work environment free from violence, threats of violence, harassment, intimidation, and other disruptive behavior. All employees are responsible for promoting a safe work environment.

b. Violence, threats, harassment, intimidation, and other disruptive behavior will not be tolerated in the workplace; all reports of incidents will be taken seriously and will be dealt with appropriately.

c. Those who engage in such behavior may be:

(1) Immediately removed from the premises.

(2) Denied re-entry pending completion of an appropriate investigation.

(3) Subject to removal from federal service, criminal prosecution, or both.

d. DoD employees will comply with the workplace violence prevention and response policies of their organizations..."

(4) DoDI number 1438.06 *Workplace Violence Prevention and Response Policy* dated 16 January 2014 also contains a definition of workplace violence at its Glossary, Part II, Definitions. It states, "workplace violence. Any act of violent behavior, threats of physical violence, harassment, intimidation, bullying, verbal or non-verbal threat, or other threatening, disruptive behavior that occurs at or outside the work site."

(5) (b) (6), (b) (7)(C) is currently the (b)(6), (b)(7)(c) (b)(6), (b)(7)(c) . She was formerly the (b)(6), (b)(7)(c)

(b) (6), (b) (7)(C) :

(6) In approximately Dec 2010, (b) (6), (b) (7)(C) started working at NGEN, PMW 210, before it merged with PMW 200 in February 2011 to become PMW 205. (b) (6), (b) (7)(C) took over the (b)(6), (b) (7)(C) position for the Enterprise Services IPT from (b) (6), (b) (7)(C), who then became (b) (6), (b) (7)(C) Deputy for approximately the next 3 to 4 months. (c)

(7) (b) (6), (b) (7)(C) described his experience working with (b) (6), (b) (7)(C). He stated, "I tried to give her proper turnover, and as the (b)(6), (b)(7)(c), [I'm] supposed to work closely with (b)(6), (b) (7)(C), and [I'm] supposed to be a backup and [Its] supposed to be transparent when it comes to all the correspondence coming down the pipe, and also, when she's... [absent] then [I'm supposed to] be in charge. But things didn't happen. I wasn't invited to the meetings she held. I wasn't being [put in] place of her when she's away. She ['d] put somebody else -- tried to put somebody else in charge when she's gone for a meeting... That's... contrary to... the direction from Program Manager. Program Manager, in the meeting invites... either the (b)(6), (b)(7)(c)

Attendee, the NGEN morning meetings. And she tried to have somebody else, somebody else represent her when I was there. So, I[t] was kind of a little bit odd..., and I don't know exactly why she was doing that, if she was hiding things, keeping -- not cover me on the projects to start the work on."

(8) (b) (6), (b) (7)(C) became so frustrated by the situation that he decided to discuss his concerns with (b) (6), (b) (7)(C). He explained, "And so that went on for about two months. And I talked to her in person, and said, 'I'm the (b) (6), (b) (7)(C) here, I'm supposed to support you and [you should] keep me in the loop for all the progress within the Enterprise so that I can cover for you and [we're] supposed to work together. And that didn't happen.' So as a Commander at the time, my position, that's not how I... [had] experienced [it] through my 28 years of military experience. That was kind of strange, because that wasn't [what I] expected of a (b) (6), (b) (7)(C) relationship. And there's no collaboration, and I just didn't know why. So, I confronted her, and I explained, 'I'm the (b) (6), (b) (7)(C), supposed to support you, [we're] supposed to work together.' But she continued on doing what she was doing."

(9) In response to his inquiry, (b) (6), (b) (7)(C) stated that (b) (6), (b) (7)(C) said, "[that what] she is doing is just the way it is. So basically [she] didn't [have a] reason why, but she just used her position to kind of shut me off. That's her decision and I have nothing to say."

(10) In reaction to this encounter, (b) (6), (b) (7)(C) discussed the situation with his first line supervisor, (b) (6), (b) (7)(C), the former (b) (6), (b) (7)(C) for (b) (6), (b) (7)(C). (b) (6), (b) (7)(C) stated that (b) (6), (b) (7)(C) found another position for him as Service Coordination (b) (6), (b) (7)(C)

(11) (b) (6), (b) (7)(C) stated that (b) (6), (b) (7)(C) did not yell, threaten or swear at him. She did not mistreat him in front of others. However, (b) (6), (b) (7)(C) said that "it was humiliating that she didn't treat me like her Deputy, and she didn't --"

(12) (b) (6), (b) (7)(C) was (b) (6), (b) (7)(C) ' (b) (6), (b) (7)(C) at the time. He recalled that he heard about (b) (6), (b) (7)(C) behavior from both (b) (6), (b) (7)(C) and others. He learned that she was "Being rude to him, and keeping him out of the loop by not sharing email and meeting invites with him." As a result, he said, (b) (6), (b) (7)(C) and I did have a general discussion with (b) (6), (b) (7)(C) about the need to get along with her co-workers, those in (b) (6), (b) (7)(C)

Enterprise Services and across the program." However, (b) (6), (b) (7)(C) explained that his decision to have (b) (6), (b) (7)(C) move to a different project was driven by a critical program need and not by (b) (6), (b) (7)(C) behavior. He agreed that (b) (6), (b) (7)(C) and others spent time away at contractor locations, but could not quantify the amount of time away or how long it lasted.

(13) (b) (6), (b) (7)(C) recalled that (b) (6), (b) (7)(C) was once a member of her team and described their relationship as cordial. Regarding not copying (b) (6), (b) (7)(C) on her emails, (b) (6), (b) (7)(C) stated, "Uhm, I tried to. Uhm, I... I can just say that I tried... As I wrote and continued to write a lot of e-mails an even today, I sometimes forget to copy the most obvious person that should be on it and it's no s... slight to them. I just made a mistake. Uh, that's all."

(14) (b) (6), (b) (7)(C) stated that she had an extensive list of things that needed to get accomplished, "And in interacting with (b) (6), (b) (7)(C), I asked him... 'Which of these would you like to take and be the primary person... and be responsible for those?' And I never received a response." Additionally, when asked to quantify the number of interactions that she had with (b) (6), (b) (7)(C), (b) (6), (b) (7)(C) responded that she was "unsure" because beginning 1 April 2011 she asserts that she was spending most of her time at Mitre Inc., in Tysons Corner, Virginia vice the WNY.

(15) (b) (6), (b) (7)(C) stated that no one ever counseled her regarding her working relationship with (b) (6), (b) (7)(C). She denied that she ever ignored (b) (6), (b) (7)(C) and did not know why others would say that she had.

(16) (b) (6), (b) (7)(C) stated that (b) (6), (b) (7)(C) left the program office because he wasn't wanted. She said, "Uhm, he wasn't wanted. And I don't say that on my behalf. That was from the (b) (6), (b) (7)(C). 'Cause he was not a performer."

(b) (6), (b) (7)(C) :

(17) During the latter part of 2010 and the first half of 2011, (b) (6), (b) (7)(C), (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) was embedded in PMW (b) (6), (b) (7)(C), Enterprise Services IPT and reported to her sponsor, (b) (6), (b) (7)(C)

(18) According to (b) (6), (b) (7)(C) her duties were to provide programmatic, acquisition and administrative support in

preparation for the development of an acquisition required Performance Work Statement/Statement of Work document.

(19) In describing her interactions with (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) stated that there was no yelling or screaming from (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) said that over time (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) communications towards her decreased and eventually stopped approximately during the mid-year timeframe. (b) (6), (b) (7)(C) explained that she would try to initiate communication. For example, (b) (6), (b) (7)(C) requested work and would tell (b) (6), (b) (7)(C) that she was willing to support the team. However, (b) (6), (b) (7)(C) would no longer provide work, any guidance, or any communication. (b) (6), (b) (7)(C) stated that she would see that her name would be listed on (b) (6), (b) (7)(C) meeting invites. So, (b) (6), (b) (7)(C) would attend the meetings. However, during the meetings, (b) (6), (b) (7)(C) was ignored. She was not called upon to actively participate in (b) (6), (b) (7)(C) meetings.

(20) (b) (6), (b) (7)(C) stated that (b) (6), (b) (7)(C), "...didn't necessarily have the skill sets that were required for the work that needed to be done by the IPT. And so, I tried giving her work that she could accomplish. Uhm, and in fact, now that I recall, is she was also in my absence was also given work by others within the program to do. Now I can't recall that work, but she was given it." She stated that she advised (b) (6), (b) (7)(C) (b) (6), (b) (7)(C), SSC LANT NGEN IPT (b) (6), (b) (7)(C) of the deficiencies in (b) (6), (b) (7)(C) skill set. (b) (6), (b) (7)(C)

(21) (b) (6), (b) (7)(C) stated that the first indication that (b) (6), (b) (7)(C) had issues with (b) (6), (b) (7)(C)' performance is shown by (b) (6), (b) (7)(C) email dated 23 March 2011 email to (b) (6), (b) (7)(C) requesting a change in position. (b) (6), (b) (7)(C) wrote, (b) (6), (b) (7)(C), I have an interest in Information Assurance and would like to know if I can support NEN's Information Assurance (Cyber Security) segment instead of Enterprise Services? I have discussed this with (b) (6), (b) (7)(C) (Cyber Security IPT Lead) and he has no problem with me joining his team. I have also talked with (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) and she has no problem with me supporting (b) (6), (b) (7)(C). If you concur, what additionally needs to be done to make this happen? V/r (b) (6), (b) (7)(C), CIV"

(22) However, (b) (6), (b) (7)(C) stated that she was not truly aware of what was going on until the early part of May 2011 by another embedded SSC LANT employee. Her statement is evidenced by a 12 May 2011 email response she gave to (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) Competency aligned supervisor, who inquired (b) (6), (b) (7)(C)

about whether (b) (6), (b) (7)(C) ' position at (b)(6), (b)(7)(c) would be renewed. (b) (6), (b) (7)(C) wrote, "Donna - I have not heard a word. I will be up there next week, but I know (b) (6), (b) (7) told me this week that she would like a new job. She is not being used proper. (b) (6), (b) (7)(C) also called me last Friday (another one of our employees up there) and told me what is going on up there wrt [with regard to] (b) (6), (b) (7) - he sits across from (b) (6), (b) (7). He has been giving her some work because he indicated that the new lead for her section is leaving her hanging. Unsat! (b) (6), (b) (7)(C) is concerned to but knows the 'stuff' going on up there as to the games if you will. I will try to talk to the new lead and see what is going on. It may be best if there is a new job opening somewhere else. She isn't the only one - I have another person also asking for a new job. R/(b) (6), (b) (7)"

(23) (b) (6), (b) (7)(C) did not recall the specific conversation, but did recall that (b) (6), (b) (7)(C) told her that (b) (6), (b) (7)(C) did not have the correct skill set needed. (b) (6), (b) (7)(C) stated, "I don't recall exact conversations, but I know we were lookin' at you know what... what things that she could do and I... (b) (6), (b) (7)(C) was new also and uh, you know so you know she had a different style of leadership too, so you know I was trying to work... work with the both of them figurin' out what was needed and what... what kinda direction (b) (6), (b) (7) needed because in my opinion (b) (6), (b) (7), I mean everything I asked her to do she did it for me and you know if she had questions you know she'd come and ask me and you know I asked (b) (6), (b) (7) I think, you know, kinda do the same and be very clear on what was needed to be done."

(24) (b) (6), (b) (7)(C) acknowledged that (b) (6), (b) (7)(C) didn't have the necessary skill set. She recalled, "We knew that uhm, you know she didn't have all the skills walking into the job... But, it was something that we thought that she could grow. And evidentially, when this new person got there, it was like, 'Oh, no. No. I want... you know I want someone skilled on day one, not someone that I have to train up.' But, uhm, but, I do remember (b) (6), (b) (7) sayin' that this person just wouldn't talk to her."

(25) (b) (6), (b) (7)(C) stated that if an employee didn't have the skill set, they would work with the sponsor to identify the employee's deficiencies, and determine if training would get the employee where they needed to be. However, (b) (6), (b) (7)(C) was not open to this and they were just "shut off".

(26) (b) (6), (b) (7)(C) agreed that it is not appropriate for a sponsor to ignore or alienate the embedded employee, but believes that the practice is commonplace. She stated, "I think... in the Navy working capital organization uhm, people just decide that you're not worthy of being on their projects and they just uh, I won't say the word firing, but they just have you removed for, you know, if you wear the wrong color shoes that day. And uhm, uh, as an organization, that's uh, I don't know. It's just become commonplace. And it's... it's horrible. It's horrible to think that if you say the wrong... you're always walking on eggshells. Uhm, especially when you're in a... uhm, uh, what do you call it? Embedded employee, that if you look at someone the wrong way, that could be your last... job."

(27) (b) (6), (b) (7)(C) described (b) (6), (b) (7)(C) management style. She stated, "She's very overbearing and it's her way or no way. Uhm, I've... I've had other incidents with one of my... the other people that work in my IPT that I had to go to bat for who's a very knowledgeable person too and I mean she just didn't like, you know, his way and he didn't know anything and she knew it all and, uh, you know, so I... I've had struggles workin' with (b) (6), (b) (7)(C)."

(28) (b) (6), (b) (7)(C) stated that her policy was that if a member of her team did not have work that they should come to her. She said that whenever (b) (6), (b) (7)(C) came to her that she did give her work. She asserted that she did not ignore (b) (6), (b) (7)(C) and did not withhold work from her. She did not know why others would state that (b) (6), (b) (7)(C) was idle.

(29) (b) (6), (b) (7)(C) stated that if people saw (b) (6), (b) (7)(C) without work it was probably during a time when she (b) (6), (b) (7)(C) ] was offsite at Mitre Inc. During her absence it would have been (b) (6), (b) (7)(C) responsibility to assign (b) (6), (b) (7)(C) work. However, (b) (6), (b) (7)(C) stated that she did not designate (b) (6), (b) (7)(C) as Acting for her when she was away. She opined that as Deputy it was not necessary to issue a designation letter/memo/email. (b) (6), (b) (7)(C) acknowledged that she continued to respond to email and phone calls via her Blackberry when she was offsite.

(30) (b) (6), (b) (7)(C) was told by the new (b) (6), (b) (7)(C) and her Competency (b) (6), (b) (7)(C) that her project support would no longer be funded for the next fiscal year. As a result of this information, (b) (6), (b) (7)(C) looked for another project and left PMW 205.

(31) (b) (6), (b) (7)(C) stated that she would not call the treatment that she received from (b) (6), (b) (7)(C) as abusive. However, she thought that her management style required improvement.

(b) (6), (b) (7)(C) :

(32) (b) (6), (b) (7)(C) is currently the (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) and was the (b) (6), (b) (7)(C) for (b) (6), (b) (7)(C) at the time of the 7 March 2013 meeting.

(33) According to (b) (6), (b) (7)(C), the working relationship between herself and (b) (6), (b) (7)(C) has been "challenging". (b) (6), (b) (7)(C) explained, "And the reason being is that uh, (b) (6), (b) (7)(C) is a person who is very condescending to me... Is unprofessional and what I mean by that is that when I send him calendar items to meet on particular topics, he doesn't even respond."

(34) (b) (6), (b) (7)(C) stated that at the monthly NETWARCOM Fleet Cyber meeting on 21 August 2013, he was giving an informational presentation concerning a project that he had been working on. He stated that within 5 minutes of presenting his first PowerPoint slide, (b) (6), (b) (7)(C), who was also in attendance, began interrupting him with questions, comments and criticisms of the slide content. He described her demeanor as agitated and confrontational. He stated that he politely answered her questions, but asked her if she could just let him get through the presentation. However, he said "she persists, and persists and persists" for approximately 15 minutes. Everyone in the room was uncomfortable. Finally, in frustration, (b) (6), (b) (7)(C) muted the phone so those dialing in would not hear, and pleaded with (b) (6), (b) (7)(C) to hold her questions and comments until he had completed the presentation. This time, (b) (6), (b) (7)(C) complied.

(35) (b) (6), (b) (7)(C) is the (b) (6), (b) (7)(C) for Jacobs Technology, Inc. and also attended the 21 August 2013 meeting. He was asked to describe (b) (6), (b) (7)(C)' behavior. He stated, "...in my opinion very confrontational. Uhm, she kept asking a bunch of detailed questions that I thought were not pertinent to the information being presented. Uhm, and even though it uh, (b) (6), (b) (7)(C) tried to, you know, do... derail the questions and, you know, told her that uh, he would take up with her uh, offline, she continued to persist in the questioning."

(36) (b) (6), (b) (7)(C) stated that (b) (6), (b) (7)(C) asked her to stop several times, but stated the first couple of times she did not comply. He noted, "she ignored him uh, and just continued

to press a point until finally uh, (b) (6), (b) (7) put uhm, you know the conference call on hold and... and made a personal plea to you know to (b) (6), (b) (7) to please stop. Uhm, that this was an... a meeting between you know PMW 205 and... and NETWARCOM and it was not the place for these kinds of questions and that he would address all of her concerns afterward if only she would just hold off uh, until the meeting was over... Uhm, she finally stopped uhm, and... and was silent uh, pretty much for the rest of the meeting."

(37) (b) (6), (b) (7)(C) thought that (b) (6), (b) (7)(C) was intentionally trying to disrupt the meeting. He stated, "...in my opinion, yes. I thought that she had uhm, her own agenda. Was not really listening to what was being said, but was really trying to press a point that in my opinion, had nothing to do with what was being presented."

(38) (b) (6), (b) (7)(C) described her behavior during the meeting. She stated, "I ask questions to which I had been asking for quite some time and could not obtain the answers from (b) (6), (b) (7). And when I was just trying to get the information, so I would have the understanding and I thought that that was the intent of the meeting and I was told that uh, no, it was just to impart information on it. Uhm, the mistake that was on my part, was that I was asking these questions when there were people from uhm, NET OPS, NETWARCOM who were on the conference call and it was inappropriate for me to do that. Uhm, (b) (6), (b) (7)(C) counseled both (b) (6), (b) (7) and me. I apologized for my actions and I said it will never occur again. And it has not and it will not..."

(39) (b) (6), (b) (7)(C) stated that her supervisor (b) (6), (b) (7)(C) did not counsel her about her behavior during the meeting and she did not receive any formal disciplinary action.

(40) (b) (6), (b) (7)(C) called his supervisor, (b) (6), (b) (7)(C) who was on leave, to discuss the incident. (b) (6), (b) (7)(C) conducted a short investigation, and stated that it supported (b) (6), (b) (7)(C) description of what occurred. However, upon contacting Human Resources, he was advised that (b) (6), (b) (7)(C) supervisor, (b) (6), (b) (7)(C), should conduct his own investigation and carry out any specific disciplinary action if the conclusions supported it.

(41) (b) (6), (b) (7)(C) stated that he did conduct an investigation, but its completion was delayed due to the government furlough, shutdown and the shooting at the WNY. As a

result of the delay, HR advised (b) (6), (b) (7)(C) that it would be inappropriate to pursue any discipline for the specific incident. However, (b) (6), (b) (7)(C) did discuss in general with (b) (6), (b) (7) her working relationship with (b) (6), (b) (7)(C). He advised (b) (6), (b) (7) to "Take the high road," and to be aware of how her (C) actions could be perceived by others.

(42) (b) (6), (b) (7)(C) was (b) (6), (b) (7)(C) supervisor during FY 2012. "So, (b) (6), (b) (7)(C) was uh, one of those people that could execute, but she was... she was... she was hard to work with. She was uh, kind of aggressive and uhm, didn't always treat people maybe the way others thought they should be treated and she was confrontational, but she got the job done."

(43) The facts contained in paragraphs 3.a. (4), (5) and (6) concerning workplace bullying also apply to this allegation.

#### **b. Discussion and Analysis.**

(1) As a Navy employee, (b) (6), (b) (7)(C) is required to comply with the CHRM. Shunning co-workers and/or subordinates, and intentionally disrupting a meeting with the intent to undermine the speaker clearly demonstrates a lack of respect and meets the characteristics of bullying behaviors. What is particularly troubling is that this pattern of behavior started in early 2010 when (b) (6), (b) (7)(C) first became a federal employee and is still being observed as of the summer of 2013.

(2) Additionally, while the recent DoDI number 1438.06 *Workplace Violence Prevention and Response Policy* dated 16 January 2014 was not in effect during these events, its issuance supports that bullying and other types of disrespectful are behaviors will no longer be tolerated within the defense community.

(b) (6), (b) (7)(C) :

(3) The preponderance of the evidence supports that (b) (6), (b) (7) intentionally shunned her former Deputy (b) (6), (b) (7)(C). (C) Her actions humiliated (b) (6), (b) (7)(C) and were observed by others.

(4) It is irrelevant as to any rationale (b) (6), (b) (7)(C) may have had for her poor treatment of him. Application of the CHRM requirements is not reserved for only the good performers or those valued by leadership.

(5) Additionally, she was wasting government funds by not engaging him in the Enterprise Services work. She had a duty and a responsibility to ensure that he was optimally utilized while in that position. If he was non-responsive to her requests to take assignments, she should have elevated the matter.

(b) (6), (b) (7)(C) :

(6) At the time (b) (6), (b) (7)(C) became the Enterprise Services lead in December 2010, and (b) (6), (b) (7)(C) was already supporting the Enterprise Services IPT. (b) (6), (b) (7)(C) argues that she was offsite beginning in April 2011 and not responsible for (b) (6), (b) (7)(C) ' day to day workload. However, the 23 March 2011 email sent by (b) (6), (b) (7)(C) asking to be transferred shows that the shunning/disrespectful treatment began before (b) (6), (b) (7)(C) began working a significant amount of time offsite. Additionally, (b) (6), (b) (7)(C) email shows that she had not been informed of the performance issue until early May 2013. Therefore, it appears that (b) (6), (b) (7)(C) issues with (b) (6), (b) (7)(C) ' skill set began early on. (b) (6), (b) (7)(C) took no action to inform SSC LANT leadership of her dissatisfaction.

(7) Instead, (b) (6), (b) (7)(C) set (b) (6), (b) (7)(C) adrift without explanation where (b) (6), (b) (7)(C) continued to be paid by the PEO/PMW without being given an adequate workload. (b) (6), (b) (7)(C) inaction was monetarily wasteful and demonstrated behavior that was disrespectful towards (b) (6), (b) (7)(C) .

(b) (6), (b) (7)(C) :

(8) The preponderance of the evidence supports that (b) (6), (b) (7)(C) confrontational questions and comments made during (b) (6), (b) (7)(C) 21 August 2013 presentation were intended to be and were disruptive and disrespectful, vice an attempt by (b) (6), (b) (7)(C) to gain information.

(9) (b) (6), (b) (7)(C) disruptive behavior at the meeting wasted the time of all who were in attendance, reflected poorly upon the PEO-EIS/PMW205, and was insensitive, unkind and disrespectful towards the presenter, (b) (6), (b) (7)(C) .

(10) Significantly mitigating these events is the fact that (b) (6), (b) (7)(C) has apparently a pattern of disrespectful behavior, and management has not effectively addressed these

incidents or issues in the past. Based on (b) (6), (b) (7)(C) comments, we do not doubt that (b) (6), (b) (7)(C) is an intelligent and effective employee who "gets the job done". She is deserving of the attention and resources necessary to make her a better employee, one respectful of others.

(11) The allegation that (b) (6), (b) (7)(C) behaved disrespectfully towards (b) (6), (b) (7)(C) in violation of DoN, Civilian Human Resource Manual (CHRM), Subchapter 752, section 7 and Appendix B is substantiated.

**c. Conclusion:** This allegation is **substantiated**.

**d. Recommendation:** Forward to PEO-EIS for action as deemed appropriate.

**e. Disposition:** Pending

**6. Fourth Allegation:** That (b) (6), (b) (7)(C), (b) (6), (b) (7)(c) acted disrespectfully and unprofessionally towards others by yelling, and cursing in the workplace at two separate meetings held on 7 March 2013 and 24 April 2013 in violation of DoN, Civilian Human Resource Manual (CHRM), Subchapter 752, section 7 and Appendix B. **Substantiated.**

**a. Facts:**

(1) The DON CHRM, Subchapter 752, section 7.f. notes in part, "Employees who fail to comply with (1) through (4) below may be subject to discipline under this subchapter. They are responsible for (1) Conducting themselves, both on and off duty, in a manner that will ensure that their conduct does not reflect adversely on the DON. ... (3) Following on the job rules."

(2) The DON CHRM, Subchapter 752, Appendix B Schedule of Offenses and Recommended Remedies, notes in part paragraph 1.b. Instruction for use of this schedule, "Consistent with DON policy in this subchapter, the schedule generally provides for a range of remedies (e.g., Reprimand to Removal) to provide management with flexibility in correcting conduct deficiencies..." In the Miscellaneous Offenses schedule it contains the following offense, "Disrespectful conduct, use of insulting, abuse or

obscene language to or about other personnel. ... Reprimand to Removal."

(3) Subsequent to these events the DoD issued DoD Instruction (DoDI) number 1438.06 *Workplace Violence Prevention and Response Policy* dated 16 January 2014. It states in part, "3. POLICY. It is DoD policy that:

a. DoD Components work with employees to maintain a work environment free from violence, threats of violence, harassment, intimidation, and other disruptive behavior. All employees are responsible for promoting a safe work environment.

b. Violence, threats, harassment, intimidation, and other disruptive behavior will not be tolerated in the workplace; all reports of incidents will be taken seriously and will be dealt with appropriately.

c. Those who engage in such behavior may be:

- (1) Immediately removed from the premises.
- (2) Denied re-entry pending completion of an appropriate investigation.
- (3) Subject to removal from federal service, criminal prosecution, or both....

2.d. DoD employees will comply with the workplace violence prevention and response policies of their organizations..."

(4) DoDI number 1438.06 *Workplace Violence Prevention and Response Policy* dated 16 January 2014 also contains a definition of workplace violence at its Glossary, Part II, Definitions. It states, "workplace violence. Any act of violent behavior, threats of physical violence, harassment, intimidation, bullying, verbal or non-verbal threat, or other threatening, disruptive behavior that occurs at or outside the work site."

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(5) In October 2012, PMW 205 began the process of reorganizing its team to a matrix organization. This meant that individuals could be supporting more than one IPT lead depending upon the projects to which they would be assigned.

(6) (b) (6), (b) (7)(C) is currently the (b)(6), (b)(7)(c) (b)(6), (b)(7)(c) and was the (b)(6), (b)(7)(c) for NEN/PMW 205 at the time of the 7 March 2013 meeting.

(7) (b) (6), (b) (7)(C) is a (b)(6), (b)(7)(c) for Networks currently embedded in PMW 240, formerly embedded in (b)(6), (b)(7)(c) reporting to (b) (6), (b) (7)(C), (b)(6), (b)(7)(c) (b)(6), (b)(7)(c) ) and (b) (6), (b) (7)(C), PMW 205's (b)(6), (b)(7)(c) Her competency aligned supervisor is (b) (6), (b) (7)(C).

(8) (b) (6), (b) (7)(C) was tasked to be a source selection board advisor for the award of the NGEN contract. As a result, he could no longer perform the CHENG duties. An Acting CHENG, (b) (6), (b) (7)(C), was appointed, and workload had to be redistributed.

(9) In late February, (b) (6), (b) (7)(C) complained to her competency supervisor, (b) (6), (b) (7)(C), that she could no longer manage her unusually heavy workload. Discussions were held with (b) (6), (b) (7)(C), who had responsibility for identifying resources for the taskings, and changes were made to her workload as detailed in her 26 February 2013 email to (b) (6), (b) (7)(C), cc: (b) (6), (b) (7)(C), and (b) (6), (b) (7)(C). She wrote in part: (b) (6), (b) (7)(C), As discussed and agreed last week, I am to focus on the Project 1 CAM role and performing duties related to (b)(6), (b)(7)(c) while (b)(6), (b)(7)(c) is out. The ITSM process work is to be transferred to another competent government individual, who needs to step up immediately, in order to be the co-lead at the March workshops (PMW 205) with (b) (6), (b) (7)(C) (NetOps)."

(10) (b) (6), (b) (7)(C) did not agree with the changes. In his 27 February 2013 email he wrote, "(b) (6), (b) (7)(C), I remember a brief conversation about this last week but I don't remember agreeing with any of it. I am not comfortable with (b) (6), (b) (7)(C) leaving the Process Lead role until the workshops are complete and a suitable replacement is found... At this point I am not comfortable with anyone else seeing that through other than (b) (6), (b) (7)(C) since she is the one that put the plan in place..."

(11) At the conclusion of the 7 March 2013 Government Readiness Review - Zero (GRR-0) at the Washington Liaison Office in Arlington, VA a sidebar meeting was arranged to discuss some issues that had arisen concerning (i) the recent decision that (b) (6), (b) (7)(C) would no longer be the ITSM Process Lead, and (ii) the alleged direction that (b) (6), (b) (7)(C), had given to (b) (6), (b) (7)(C)

(12) In attendance at the meetings were the following:

- (b) (6), (b) (7)(C)

- (b) (6), (b) (7)(C) . He is a SPAWAR 5.0 employee, embedded in (b)(6), (b)(7)(c) .
- (b) (6), (b) (7)(C) . She is both (b)(6), (b)(7)(C) and (b) (6), (b) (7)(C) SPAWAR 5.0 competency aligned (b)(6), (b)(7)(c) .
- (b) (6), (b) (7)(C) is an (b)(6), (b)(7)(c) with SPAWAR Systems Center Atlantic, (b)(6), (b)(7)(c) . He was the (b)(6), (b)(7)(c) .
- (b) (6), (b) (7)(C) .
- (b) (6), (b) (7)(C) is currently working at the Joint Information Environment Office and is the former (b)(6), (b)(7)(c) for PMW 205/NEN. He was (b) (6), (b) (7)(C) s (b)(6), (b)(7)(c) r at the time of the incident.
- (b) (6), (b) (7)(C) is the (b)(6), (b)(7)(c) for PMW 205/NEN and (b) (6), (b) (7)(C) current supervisor. He was (b) (6), (b) (7)(C) second line supervisor at the time of the incident.

(13) According to (b) (6), (b) (7)(C) prior to the meeting (b) (6), (b) (7)(C) complained to him that (b)(6), (b)(7)(C) had told her that (b) (6), (b) (7)(C) "should not [be] interfacing back with engineering. That she worked directly for him (b) (6), (b) (7)(C) ]... So anyway... the bottom line is... ..she felt she was being suppressed and not able to talk to us... And I think one of the purposes of the meeting was to bring all of this out."

(14) (b) (6), (b) (7)(C) recalled the following about the 7 March meeting, he stated, "...so this was another follow-up to the situation with (b) (6), (b) (7)(C) and her alignment and her tasking. Uhm, the... the conversation started, and we were right back to square one which my position was the same in all three meetings. Uhm, this is... this was a really important task. It was led by (b) (6), (b) (7)(C) from the beginning, and I'm not comfortable for the Navy with just putting any resource on this so close to the period of time that we need to do it. Uhm, the conversation shifted when (b) (6), (b) (7)(C) stepped up and said, uhm, so basically if I recall correctly, he was like, 'Uh, (b) (6), (b) (7)(C), I understand that, but what is unprofessional is when you tell a SPAWAR employee that he... that he or she is not to listen or to take direction from their SPAWAR leadership.' So when he said that, it totally caught me off guard. And I... and I said, 'Excuse me?' I said, 'Did someone tell you that that is what I did?' And he looked at (b) (6), (b) (7)(C) and he said, (b) (6), (b) (7)(C) came to me and said that you told her, uhm, exactly what I just said, that she is not to listen to SPAWAR

leadership.' And I looked at (b) (6), (b) (7)(C) and I said, (b) (6), (b) (7)(C), I never ever said anything like that to you.' And (b) (6), (b) (7)(C) said, 'That's not true, (b) (6), (b) (7)(C) never said that.' And then when she said that, (b) (6), (b) (7)(C) got extremely upset because now it was kinda like (b) (6), (b) (7)(C) getting thrown under the bus. You know, he (b) (6), (b) (7)(C) ] was like 'You've (b) (6), (b) (7)(C) ] lost all credibility with me, you've been coming to me complaining about (b) (6), (b) (7)(C) doing this and that, uh, and it turns out you're doing the same thing, uhm, to him with me and this... and now you're telling me that this is not true and never happened.' "

(15) (b) (6), (b) (7)(C) recalled (b) (6), (b) (7)(C) response to (b) (6), (b) (7)(C) alleged assertion as follows, "So, his (b) (6), (b) (7)(C) ] (c) issue was... 'You all are lying. I never said those things to (b) (6), (b) (7)(C)' And at that moment, uhm, the question was asked of (b) (6), (b) (7)(C), (b) (6), (b) (7)(C) asked it, and said, 'Hey, listen, did I... did I tell you that you could only work for me and you couldn't talk to the 50 personnel and all that?' And (b) (6), (b) (7)(C) said, 'I did not say he said that.'... So that was the big... to be quite honest, that was the big ugly issue. Now, because ultimately when I left there, when I left there I kind of felt like I had been a little bit set up. They called a meeting. Uh, (b) (6), (b) (7)(C) was the guy that they were gonna show was way out of line, and they were gonna put his boss in the meeting to make sure I saw it.

(16) When asked why everyone got riled up, Mr. (b) (6), (b) (7)(C) responded, "I personally think people got riled up because... I kinda teed it up because what I wanted to do was allow her (b) (6), (b) (7)(C) to express uh, what she had expressed to me, so I could bring it to the forefront, and I think I'm the one that probably said uh, 'I've been told that you are suppressing people from you know from being able to go back, in this particular case, (b) (6), (b) (7)(C) -' Boom, boom, boom. And then from that point on uhm, that... that took legs of its own... ..he (b) (6), (b) (7)(C) ] stated somethin' about 'Well, I never said that.' " (b) (6), (b) (7)(C) recalled that (b) (6), (b) (7)(C) took offense to the question, and there was "some cursing."

(17) (b) (6), (b) (7)(C) recalled the event differently. She stated that (b) (6), (b) (7)(C) misquoted her during the meeting, and that she corrected him in front of everyone. She said, "... so what happened is, previous to the meeting (b) (6), (b) (7)(C) was telling me 'You report to engineering and you're matrixed to ITSM,' and (b) (6), (b) (7)(C) was saying, 'You should report to me and only me.' " I let (b) (6), (b) (7)(C) know that and there was an issue of course because it was in disagreement and [a] conflict. And I had told that same

statement to (b) (6), (b) (7)(C) at the meeting, GRR-0, that particular day. (b) (6), (b) (7)(C) went to restate what I had said which was that (b) (6), (b) (7)(C) told me that I should report [emphasis added] to him and only him. (b) (6), (b) (7)(C) misspoke and said that (b) (6), (b) (7)(C) said I should talk [emphasis added] to him and only him, and I said, 'No. It wasn't talk [emphasis added], it was report [emphasis added],' so I clarified the statement that day."

(18) (b) (6), (b) (7)(C) was asked if (b) (6), (b) (7)(C) yelled at her in response to her correction. She stated that at the end of the meeting when the group started to break-up, but everyone was still in the room, "(b) (6), (b) (7)(C) freaked out on me for correcting him in front of the group." (b) (6), (b) (7)(C) also recalled that (b) (6), (b) (7)(C) yelled at (b) (6), (b) (7)(C) regarding the correction.

(19) (b) (6), (b) (7)(C) also recalled that (b) (6), (b) (7)(C) said something to (b) (6), (b) (7)(C) at the end of the meeting. He said, "Uhm... verbally, he (b) (6), (b) (7)(C) cornered her on a... on... on a statement she made. And (b) (6), (b) (7)(C) was upset because uhm, uh, in... in his words I think it was 'you're not acting honorably... You know if... if you said it you should've meant it, and you should stick by it type... type of thing.'" However, he didn't think that (b) (6), (b) (7)(C) was yelling or used any profanity.

(20) (b) (6), (b) (7)(C) did not recall (b) (6), (b) (7)(C) correcting him during the meeting. However, he said that he expected that (b) (6), (b) (7)(C) was gonna get up there and say what she had said to me, but she... she didn't say anything. Uhm, nothing."

(21) (b) (6), (b) (7)(C) did recall a one on one discussion with (b) (6), (b) (7)(C) after the meeting where he expressed his disappointment concerning her failure to take advantage of the forum to express her concerns.

(22) (b) (6), (b) (7)(C) described the behavior at the meeting, "...it got very heated. Uhm, (b) (6), (b) (7)(C) raising his voice, cursing. I actually was scared that there was gonna be a fistfight to be honest... And I- and I try to not get involved and to even black it out as it's going on, and physically I sat as far away from everyone as I could while this was going on. Uhm, it was all the same stuff. It's all the same stuff. Uh, who reports to who, why he hasn't been doing his work, you know, blah, blah, blah, blah, blah,..." (b) (6), (b) (7)(C) recalled that most of the yelling was between (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C). She stated that the other attendees were mostly spectators.

(23) According to (b) (6), (b) (7)(C) as the various issues began to unfold, (b) (6), (b) (7)(C) began raising his voice and cursing. He stated, "it was like he was gonna blow a gasket type... type of thing... ..it was just a lot of misunderstandings but- but given that it was misunderstanding or given that there was probably poor communication that didn't excuse... the explosive behavior." (b) (6), (b) (7)(C) also stated that (b) (6), (b) (7)(C) used profanity.

(24) When (b) (6), (b) (7)(C) was asked who was yelling at the meeting he stated, "From what I remember it was... it was (b) (6), (b) (7)(C). Uhm, (b) (6), (b) (7)(C) raised his voice and... and maybe (b) (6), (b) (7)(C) on a defensive end... In fact, from what I remember he [(b) (6), (b) (7)(C)] sat back in the corner and virtually said nothing."

(25) When (b) (6), (b) (7)(C) was advised that others had witnessed (b) (6), (b) (7)(C) yelling, (b) (6), (b) (7)(C) responded, "Well, I didn't... I don't think he said much. There were probably a couple of instances where he thought that maybe his work ethic or something had been questioned, so he said things to defend himself, but it wasn't much at all. I mean it was uhm, a handful of sentences and uh... uh... uh, because I've heard about this before and... and when I talked to (b) (6), (b) (7)(C) afterwards uh, he remembered the same thing, but uhm."

(26) (b) (6), (b) (7)(C) too recalled (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) yelling and swearing, but did not remember (b) (6), (b) (7)(C) being quiet. He stated, "The, the yelling and swearing basically was coming from, uhm, a small group out of the seven which was, uhm, (b) (6), (b) (7)(C), and, and- I don't- again, I don't remember (b) (6), (b) (7)(C) swearing, right?... now, (b) (6), (b) (7)(C) was angry. Don't, don't get me wrong. He was... he was upset. He was... he was, well, more than upset. He was ang- [Investigator: Was he yelling?] He was... uhm, everybody... well, I wouldn't say everybody. The folks who were involved in the conversation, it was... it was raised voices. Was he... was he yelling? Nobody was out of control yelling. I want to emphasize that. [Investigator: Did he use curse words?] I'm gonna say he could have, right? But he wasn't doin' all the talking."

(27) (b) (6), (b) (7)(C) said that during the meeting she advised (b) (6), (b) (7)(C) that she was planning on pulling (b) (6), (b) (7)(C) from the program. According to (b) (6), (b) (7)(C), (b) (6), (b) (7)(C) reacted negatively to this news. She stated, "And that's when he started screaming at me. Uhm, he was sitting across the table from me, but he put his hands on the table and just kinda came over across the table and screamed and pointed his fingers

and yelled at me... He... he pretty much used the F-word and that I didn't really understand what I was talking about and that, uhm, (b) (6), (b) (7) was supposed to be working for him..."

(28) (b) (6), (b) (7)(C) also recalled (b) (6), (b) (7)(C) yelling (b) (6), (b) (7)(C) Mr. Hasan using the 'F' word a number of times, and recalled that he also used the 'S' word.

(29) (b) (6), (b) (7)(C) also recalled a confrontation between (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C). He recalled that (b) (6), (b) (7)(C) was a "little uncomfortable."

(30) (b) (6), (b) (7)(C) also noted that (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) objected to (b) (6), (b) (7)(C) behavior. She explained, "...and they started challenging him, but then the voices got loud and I tried to stop them all and (b) (6), (b) (7)(C), just let them... you know, just continued to... to let them vent..."

(31) (b) (6), (b) (7)(C) denied that he used profanity during the meeting, and noted, "because [of] that particular audience. I could not see myself sayin' anything that was inappropriate." He did not recall (b) (6), (b) (7)(C) using profanity either. However, he did recall (b) (6), (b) (7)(C) using profanity, but could not recall exactly what curse words were said.

(32) (b) (6), (b) (7)(C) also recalled a separate argument during the subject meeting between (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C). (b) (6), (b) (7)(C) did not think the argument was specifically related to the (b) (6), (b) (7)(C) situation, but could not remember the topic. He stated, "It... it was something that was... that (b) (6), (b) (7)(C) had said that (b) (6), (b) (7) took exception to. And (b) (6), (b) (7) said, 'Well I... well hold on. Let me set you straight with exactly what had transpired.' So again, I don't recall what was about, but uhm, (b) (6), (b) (7) is uh, his personality sometimes he goes off. He's a screamer kind- and... so what- whatever road he was goin' down (b) (6), (b) (7) had to you know to bring him back to the point where he understood - the points that (b) (6), (b) (7) was trying to get across. Either a, he was saying something that was inaccurate and (b) (6), (b) (7) was setting uhm, the tone of 'No. Let me tell you from an accurate perspective, this is what transpired,'" and I don't exactly remember what the subject was. Uhm, but."

(33) (b) (6), (b) (7)(C) recalled that he did have a disagreement with (b) (6), (b) (7)(C) regarding the priority of the work.

He stated that his voice was raised as was (b) (6), (b) (7)(C), but neither he nor (b) (6), (b) (7)(C) used profanity.

(34) Initially (b) (6), (b) (7)(C) denied that he was swearing during the meeting. However, he subsequently stated, "Well, let me... let me... so, it's possible that I used a curse word, but I never directed it at anybody when I never directed it at a person. And me, expressing my own frustration, I may have used the word, uh, B-S..." (b) (6), (b) (7)(C) stated that he did not recall using the f-word.

(35) (b) (6), (b) (7)(C) of (b) (6), (b) (7)(C) was still in the room when the sidebar meeting concerning (b) (6), (b) (7)(C) began. He stated, "The meeting had just concluded. A few contractors were in the room including myself. We were cleaning up... It got a little louder as they were talking - I wouldn't say screaming - just a little loud where you couldn't ignore it. I remember (b) (6), (b) (7)(C) kinda raising his voice a little bit at (b) (6), (b) (7)(C) and uh, (b) (6), (b) (7)(C) just basically saying, 'Calm down, we're just trying to get to the bottom of this. I'm just trying to explain what is going on here.' And then we were told by (b) (6), (b) (7)(C) to leave the room... But it was basically (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) talking amongst themselves..." Once outside the room, (b) (6), (b) (7)(C) stated that he could no longer hear anything because the room is really secure.

(36) During their interviews, witnesses (b) (6), (b) (7)(C) SPAWAR 5.0, (b) (6), (b) (7)(C), SPAWAR 5.0 and (b) (6), (b) (7)(C) SSC LANT, expressed opinions regarding (b) (6), (b) (7)(C) historical behavior in the workplace:

- (b) (6), (b) (7)(C) described (b) (6), (b) (7)(C) treatment of her subordinate, (b) (6), (b) (7)(C), as "bullying techniques... ..he's fairly threatening, and he raises his voice..."
- (b) (6), (b) (7)(C) stated that (b) (6), (b) (7)(C) had a "strong personality. It's his way or the highway. You can never talk to him, uhm about other ideas."
- (b) (6), (b) (7)(C) noted that there had been previous times where he had seen (b) (6), (b) (7)(C) out of control. He stated that (b) (6), (b) (7)(C) "...doesn't manage his... emotions very well at times."

(37) However, (b) (6), (b) (7)(C) work experience with (b) (6), (b) (7)(C) has been positive. He stated, "Only totally value as (an employ[ee]. Now, now, other people have a history with him that I don't have, but, but all I know is when we simply say, "Here's your job. Here's what we need from you. Here's the leadership

I expect." I never... I've never had a problem, right? I've never had... never, not, not once, have had a problem..."

(38) The interview of (b) (6), (b) (7)(C) was conducted via telecom at the NAVSEA Inspector General offices at the WNY. Both the SPAWAR investigators and the assisting NAVSEA investigators noted that (b) (6), (b) (7)(C) had an unusually loud speaking voice.

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(39) (b) (6), (b) (7)(C) is the (b) (6), (b) (7)(c) (b) (6), (b) (7)(c) Fleet Cyber Command.

(40) (b) (6), (b) (7)(C) described the purpose of the meeting. He stated, "...this particular meeting was me coming up as the senior representative for Fleet Cyber Command to explain to the PEO team at the request of the PM - kinda how the PEOs in this particular case how the acquisition community is to support the Fleet Operator, and that the model we have been doing within NGEN has been changing... We have to change the culture for all of us because we are going into a new model. So I was there explaining how this model was changing..."

(41) (b) (6), (b) (7)(C) recalled that he and (b) (6), (b) (7)(C) began to debate, "...and there was some debate, and (b) (6), (b) (7)(C) was giving his opinion. And even (b) (6), (b) (7)(C) was nodding her head at me [indicating], 'Don't talk about this now' because this was the topic - I could just tell by the eye exchange with me. But it was one that I felt passionate about and I need[ed] to keep pressing... And I got interrupted a couple of times, and (b) (6), (b) (7)(C) wanted to press upon me his opinion."

(42) Apparently, according to (b) (6), (b) (7)(C), (b) (6), (b) (7)(C) took exception to (b) (6), (b) (7)(C) position. (b) (6), (b) (7)(C) explained, "And (b) (6), (b) (7)(C) being his supervisor, stepped in and said, '(b) (6), (b) (7)(C) enough.' And the next thing I recall, He said 'Wait a second' and then that part got a little louder and said '(b) (6), (b) (7)(C) stop.' And (b) (6), (b) (7)(C) kept going. Then he said, 'My office now.' And at that point, you could feel the tension in the room. (b) (6), (b) (7)(C) responded something to the effect (this is not a direct quote), 'You're not my Dad. You don't tell me what to do.' And that's when (b) (6), (b) (7)(C) again said, 'My office.' And then they proceeded to debate with each other right there."

(43) (b) (6), (b) (7)(C) is employed by (b)(6), (b)(7)(c) and is with the Fleet and Customer Liaison Office. At the time of the incident, (b) (6), (b) (7)(C) was her supervisor.

(44) (b) (6), (b) (7)(C) attended the 24 April meeting. She recalled, (b) (6), (b) (7)(C) sort of, well I guess he butted in, and offered his perspective on the situation, the conversation had really been between (b) (6), (b) (7) and (b) (6), (b) (7). And I guess (b) (6), (b) (7) reacted pretty negatively to (b) (6), (b) (7)(C) about you know, him definitely not having any expertise in the area of ITSM and the conversation got very heated between (b) (6), (b) (7) and (b) (6), (b) (7)(C) to the point where um, you know (b) (6), (b) (7)(C) raised his voice and told (b) (6), (b) (7) that he needed to end the conversation and (b) (6), (b) (7) said some words that I couldn't really tell you exactly what they were and then (b) (6), (b) (7)(C) I think he stood up out of his seat and said "Part of the problem here is that you don't understand the role of NET WARCOM and you don't understand how their role has changed over the last two years and what it's going to be moving forward as a Network Operator were just with acquisition community we just don't have that kind of a role. (b) (6), (b) (7) stood up and the two of them were kind of...shouting is probably an understatement back and forth across the table um, I was, I can tell you that it was very awkward and embarrassing situation."

(45) Contractor personnel also attended the meeting and witnessed the incident.

- (b) (6), (b) (7)(C) with BAH recalled, "And (b) (6), (b) (7)(C) just interjected and started um, screaming at (b) (6), (b) (7) saying, 'You don't know how the Navy works. This is how it's been. This is how it's always going to be.' And in the middle of that (b) (6), (b) (7) just basically screamed back at him and told him, 'You're not my father. Stop screaming at me.' And that is pretty much how that escalated."
- (b) (6), (b) (7)(C) with Jacobs Engineering observed, "...there was very heated discussion going back and forth where they [(b) (6), (b) (7)(C)] were yelling at each other to the point where I don't think either one heard the other party, you know because they were just hollering back and forth."

(46) (b) (6), (b) (7)(C) recalled that the yelling lasted 10 minutes. (b) (6), (b) (7)(C) remembered it lasting 5 minutes. However, (b) (6), (b) (7)(C) guessed that it only lasted a minute or

two because, "You know it is hard to yell at the top of your lungs for longer than that because it really was yelling at the top of your lungs." (b) (6), (b) (7)(C) also recalled hearing the word bullshit from both parties.

(47) (b) (6), (b) (7)(C) recalled the following about what happened. He stated, "(b) (6), (b) (7)(C) was in the room and... there was a... a... a very, uh, disrespectful thing done where I was screamed at and yelled at by (b) (6), (b) (7)(C) for doing my job, and I was basically told to shut up. And I told (b) (6), (b) (7)(C) and I did raise my voice that 'you are not my father, my father is in the ground... And he's the only one that can talk to me like that...' Uhm, I was not cursing. I... I... there was a... a disagreement, a professional disagreement, and again I was told to shut up by (b) (6), (b) (7)(C) and I... I simply stated, '...I'm trying to do my job and I will not accept being treated this way.'" (b) (6), (b) (7)(C) stated that he and (b) (6), (b) (7)(C) subsequently move to an office to discuss the incident, and (b) (6), (b) (7)(C) apologized to him.

(48) When (b) (6), (b) (7)(C) was asked if he believed that his behavior was appropriate for a professional meeting he stated, "...you can only be treated a certain way for so long without the overwhelming feeling of you need to stand up for yourself, and after so many meetings where I have been thrown under the bus, disrespected, and discriminated against, it eventually got to a point where I had reached my limit and felt like I needed to stand up for myself because nobody was standing up for me."

(49) (b) (6), (b) (7)(C) described his part in the incident. He stated, "(b) (6), (b) (7)(C) was saying things that were... made (b) (6), (b) (7)(C) take exception 'cause he had felt like his reputation was being threatened, so they started yelling at each other and so, initially I tried to calm (b) (6), (b) (7)(C) down and that didn't work and so, I... I... I did jump up and I raised my voice. I started yelling at him too. I didn't demean him or swear at him. I had realized very quickly that that wasn't gonna work, so I got us both out of the room. Uhm, and went into another office... Uh, we had resolved our differences in a very short order after the meeting, but... ..at the time I will admit that it was not a professional presentation, so."

(50) When asked if his behavior was professional, (b) (6), (b) (7)(C) responded, "Well, the fact that I raised my voice when I didn't do any good, yes. So, in that sense I could've gone... Uhm, it had to be less than two minutes, but that's not something I think I have a very good memory for. I mean like I

said I realized pretty quickly that that tactic m... by yelling back wasn't gonna help, so... Well, I don't think that raising your voice or yelling is... is helpful in any point in time, but like I said I realize very quickly that it wasn't helping in that situation, so I removed us both from the room, so... But... but if they're saying that I was swearing or being demeaning to people, then that's not the case."

**b. Discussion and Analysis.**

(1) With a diverse workforce, it is important to consider the sensibilities of all. Behavior and language that may be acceptable to certain individuals may be offensive and emotionally overwhelming for others. No one should be sacrificed for the sake of the mission.

(2) Yelling, screaming and swearing in front of one's peers and superiors whether or not specifically directed at any one person is disrespectful behavior. Therefore, this is the type of conduct expressly prohibited pursuant to the CHRM.

(3) Also, although not applicable during the subject timeframe, the recent issuance of DoDI number 1438.06 *Workplace Violence Prevention and Response Policy* dated 16 January 2014 demonstrates that the DoD recognizes this type of behavior is not to be tolerated in the workplace, and should be dealt with swiftly by management.

(4) The various witness and subject accounts of how this emotional storm began vary to some degree. However, further effort to sort out the truth regarding who said what is not necessary because there is nothing barring physical threat that can justify this disrespectful and unprofessional behavior.

(5) The examination therefore focuses on whether the behavior occurred and the evidence that supports it.

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(6) Based on the preponderance of evidence, (b) (6), (b) (7)(C) was yelling and swore at the 7 March 2013 meeting. Therefore, his behavior was in violation of the CHRM.

(7) Significantly mitigating (b) (6), (b) (7)(C) actions was the presence of the (b) (6), (b) (7)(C), (b) (6), (b) (7)(C), at the meeting, and management's responsibilities:

- The DPM had a responsibility to stop the behavior of (b) (6), (b) (7)(C) as soon as it began. Instead, he chose to let the behavior continue.
- Additionally, a meeting with all parties present does not appear to have been necessary because project priority is a management decision, based on knowledge of the program's schedule and deliverables and not a topic for debate. Given that NEN had adopted a matrix organization, it is particularly important that **management clearly establish and communicate project priority and resource assignment**, so that individuals are not caught in a leadership tug of war, and program goals are met.
- Finally, if the meeting was really about (b) (6), (b) (7)(C) alleged history of disrespectful and unprofessional behavior, **complainants have a responsibility to report** alleged incidents to (b) (6), (b) (7)(C) superiors **as the incidents occur** to be investigated, addressed and resolved.
- It is the responsibility of (b) (6), (b) (7)(C) supervisor/managers to **take reports of disrespectful behavior seriously** (see Eighth Allegation).

(8) We do not doubt, as (b) (6), (b) (7)(C) asserts, the value that (b) (6), (b) (7)(C) knowledge and experience brings to the organization. However, management is doing (b) (6), (b) (7)(C), and the program office a severe disservice by not adequately addressing allegations that arise regarding (b) (6), (b) (7)(C) disrespectful behavior so (b) (6), (b) (7)(C) reputation can be cleared or corrective action instituted.

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(9) The preponderance of evidence affirms that (b) (6), (b) (7)(C) was yelling, and swore at the 24 April 2013 meeting<sup>9</sup> and acted disrespectfully. Therefore, his behavior was in violation of the CHRM.

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<sup>9</sup> Although (b) (6), (b) (7)(C) was (b) (6), (b) (7)(C) first line supervisor, we have not held (b) (6), (b) (7)(C) responsible for not carrying out his supervisory duties in this instance. (b) (6), (b) (7)(C) was the most senior manager present and he directed that the heated discussion should continue.

(10) Mitigating (b) (6), (b) (7)(C) actions were the actions of (b) (6), (b) (7)(C), and his responsibilities as (b) (6), (b) (7)(C) superior. (b) (6), (b) (7)(C) behavior towards (b) (6), (b) (7)(C) was inappropriate, disrespectful and inflammatory.

(11) The allegation that (b) (6), (b) (7)(C) acted disrespectfully and unprofessionally towards others by yelling, and cursing in the workplace at two separate meetings held on 7 March 2013 and 24 April 2013 in violation of DoN, Civilian Human Resource Manual (CHRM), Subchapter 752, section 7 and Appendix B is substantiated.

**c. Conclusion:** This allegation is **substantiated**.

**d. Recommendation:** Forward to PEO-EIS for action as deemed appropriate.

**e. Disposition:** Pending

**7. Fifth Allegation:** That (b) (6), (b) (7)(C), SPAWAR Systems Center Atlantic Code 55300, acted disrespectfully and unprofessionally towards others by yelling in the workplace at a meeting held on 7 March 2013 in violation of DoN, Civilian Human Resource Manual (CHRM), Subchapter 752, section 7 and Appendix B. **Substantiated.**

**a. Facts:**

(1) The facts contained in the Fourth Allegation, paragraphs 6. a. (1) through (38) also applies to this allegation.

**b. Discussion and Analysis.**

(1) Based on the preponderance of evidence, (b) (6), (b) (7)(C) was yelling at the 7 March 2013 meeting. The evidence is not conclusive that he used profanity. None-the-less, his behavior was in violation of the US Navy Regulations because his behavior did not comply with the CHRM.

(2) Also, while not applicable to this event, the recent issuance of DoDI 1438.06 *Workplace Violence Prevention and Response Policy* dated 16 January 2014 demonstrates that the DoD recognizes this type of disrespectful behavior is not to be

tolerated in the workplace, and should be dealt with swiftly by management.

(3) Significantly mitigating (b) (6), (b) (7)(C) behavior was the presence of the (b) (6), (b) (7)(c), (b) (6), (b) (7)(C), at the meeting, and management's responsibilities:

- The DPM had a responsibility to stop the behavior of (b) (6), (b) (7)(C) and others as soon as it began. Instead, he chose to let the behavior continue (see allegation eight).
- Additionally, a meeting with all parties present does not appear to have been necessary because project priority is a management decision, based on knowledge of the program's schedule and deliverables and not a topic for debate. Given that NEN had adopted a matrix organization, it is particularly important that **management clearly establish and communicate project priority and resource assignment**, so that individuals are not caught in a leadership tug of war, and program goals are met.

(4) The allegation That (b) (6), (b) (7)(C) SPAWAR Systems Center Atlantic (b) (6), (b) (7)(c), acted disrespectfully and unprofessionally towards others by yelling in the workplace at the meeting held on 7 March 2013 in violation of DoN, Civilian Human Resource Manual (CHRM), Subchapter 752, section 7 and Appendix B is substantiated.

**c. Conclusion:** This allegation is **substantiated**.

**d. Recommendation:** Forward to Commanding Officer, SPAWAR Systems Center Atlantic for action as deemed appropriate.

**e. Disposition:** Pending

**8. Sixth Allegation:** That (b) (6), (b) (7)(C), SPAWAR (b) (6), (b) (7)(c), acted disrespectfully and unprofessionally towards others by yelling in the workplace at a meeting held on 7 March 2013 in violation of DoN, Civilian Human Resource Manual (CHRM), Subchapter 752, section 7 and Appendix B. **Substantiated.**

**a. Facts:**

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<sup>10</sup> . (b) (6), (b) (7)(C) was the most senior (b) (6), (b) (7)(c) manager present and directed that the heated discussion should continue.

(1) The facts contained in the Fourth Allegations paragraphs 6.a. (1) through (38) also apply to this allegation.

**b. Discussion and Analysis.**

(1) Based on the preponderance of evidence, (b) (6), (b) (7)(C) was yelling at the 7 March 2013 meeting. The evidence is not conclusive that he used profanity. None-the-less, his behavior was in violation of the CHRM because his behavior was disrespectful towards those present at the meeting.

(2) Also, while not applicable to this event, the recent issuance of DoDI 1438.06 *Workplace Violence Prevention and Response Policy* dated 16 January 2014 demonstrates that the DoD recognizes that this type of behavior is not to be tolerated in the workplace, and should be dealt with swiftly by management.

(3) Significantly mitigating (b) (6), (b) (7)(C) behavior was the presence of the (b)(6), (b)(7)(c), (b) (6), (b) (7)(C), at the meeting, and management's responsibilities:

- The DPM had a responsibility to stop the disrespectful behavior of (b) (6), (b) (7)(C) and others as soon as it began. Instead, he chose to let the behavior continue (see allegation eight).
- Additionally, a meeting with all parties present does not appear to have been necessary because project priority is a management decision, based on knowledge of the program's schedule and deliverables and not a topic for debate. Given that NEN had adopted a matrix organization, it is particularly important that **management clearly establish and communicate project priority and resource assignment**, so that individuals are not caught in a leadership tug of war, and program goals are met.

(4) The allegation that (b) (6), (b) (7)(C), SPAWAR Code (b)(6), (b)(7), acted disrespectfully and unprofessionally towards others by yelling in the workplace at a meeting held on 7 March 2013 in violation of DoN, Civilian Human Resource Manual (CHRM), Subchapter 752, section 7 and Appendix B is substantiated.

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<sup>11</sup> . (b) (6), (b) (7)(C) was the most senior (b)(6), (b)(7)(c) manager present and directed that the heated discussion should continue.

c. **Conclusion:** This allegation is **substantiated**.

d. **Recommendation:** Forward to SPAWARSSYSCOM Code 5.0 for action as deemed appropriate.

e. **Disposition:** Pending

**9. Seventh Allegation:** That (b) (6), (b) (7)(C) [REDACTED], USN, the former (b)(6), (b)(7)(c) [REDACTED] acted abusively towards (b) (6), (b) (7)(C) [REDACTED], currently with the (b)(6), (b)(7)(c) [REDACTED] team, on 13 March 2013, and (b) (b) (6), (b) (7)(C) [REDACTED] Government and Operational Model (b)(6), (b)(7)(c) [REDACTED] (b)(6), (b)(7)(c) [REDACTED] on 23 April 2013 by yelling and cursing in violation of (i) U.S. Navy Regulations, Chapter 10, Section 2., Authority, Paragraph 1023, and (ii) Article 92, UCMJ, Failure to obey order or regulation. **Substantiated.**

**a. Facts:**

(1) U.S. Navy Regulations, Chapter 10, Section 2. "Authority", Paragraph 1023, states, "Persons in authority are forbidden to injure their subordinates by tyrannical or capricious conduct, or by abusive language."

(2) Article 92 of the Punitive Articles of the Uniform Code of Military Justice (UCMJ) states in part,

"Any person subject to this chapter who--

- (1) violates or fails to obey any lawful general order or regulation;
- (2) having knowledge of any other lawful order issued by any member of the armed forces, which it is his duty to obey, fails to obey the order; or
- (3) is derelict in the performance of his duties; shall be punished as a court-martial may direct."

(3) The Manual for Courts Martial, Part IV, Punitive Articles, Para. 16, Failure to obey order or regulation states in part,

"b. *Elements.*

(1) *Violation of or failure to obey a lawful general order or regulation.*

(a) That there was in effect a certain lawful general order or regulation;

(b) That the accused had a duty to obey it, and

(c) That the accused violated or failed to obey the order or regulation."

Additionally, in part c. it states,

"General orders or regulations are those orders or regulations generally applicable to an armed force which are properly published by the President or the Secretary of Defense, of Homeland Security, or of a military department..." and

"Knowledge of a general order or regulation need not be alleged or proved, as knowledge is not an element of this offense and a lack of knowledge does not constitute a defense." U.S. Navy Regulations, Chapter 1, Section 1., paragraph 0101, "United States Navy Regulations shall be issued by the Secretary of the Navy with the approval of the President." In 1981, this provision was amended to eliminate the requirement for presidential approval.

(4) Although not in effect during the subject timeframe, DoD Instruction (DoDI) 1438.06 *Workplace Violence Prevention and Response Policy* dated 16 January 2014. It states in part, "3. POLICY. It is DoD policy that:

a. DoD Components work with employees to maintain a work environment free from violence, threats of violence, harassment, intimidation, and other disruptive behavior. All employees are responsible for promoting a safe work environment.

b. Violence, threats, harassment, intimidation, and other disruptive behavior will not be tolerated in the workplace; all reports of incidents will be taken seriously and will be dealt with appropriately.

c. Those who engage in such behavior may be:

(1) Immediately removed from the premises.

(2) Denied re-entry pending completion of an appropriate investigation.

(3) Subject to removal from federal service, criminal prosecution, or both...

3.d. DoD employees will comply with the workplace violence prevention and response policies of their organizations..."

(5) DoDI 1438.06 *Workplace Violence Prevention and Response Policy* dated 16 January 2014 also contains a definition of workplace violence at its Glossary, Part II, Definitions. It states, "workplace violence. Any act of violent behavior, threats of physical violence, harassment, intimidation, bullying, verbal or non-verbal threat, or other threatening, disruptive behavior that occurs at or outside the work site."

(6) In the fall of 2012, (b) (6), (b) (7)(C) was recruited by the former PM, (b) (6), (b) (7)(C), to join the PMW 205 staff.

(b) (6), (b) (7)(C) is the former (b) (6), (b) (7)(C) for (b) (6), (b) (7)(C). He is currently the (b) (6), (b) (7)(C) for the (b) (6), (b) (7)(C).

(b) (6), (b) (7)(C), 13 March 2013 Monthly Meeting:

(7) (b) (6), (b) (7)(C) is currently a member of the (b) (6), (b) (7)(C) formerly working at (b) (6), (b) (7)(C) as the Next Generation Network (ngNET) project (b) (6), (b) (7)(C).

(8) (b) (6), (b) (7)(C) recalled an incident that occurred on 13 March 2013 at a regular monthly meeting where the ngNET software tool was being demonstrated. She stated, "We held a meeting with, uhm, stakeholders of the tool with our, uhm, CTR's [Customer Technical Representative], BSO representatives, a select number of them and their support team as well as (b) (6), (b) (7)(C). (b) (6), (b) (7)(C) was attending and then a number of members of my team were in attendance, and we did a demonstration. Oh, BSC, uhm, Business Support Center from NAVSEA (INAUDIBLE) was also on the phone, and we were giving a demonstration of what had been developed to date, uh, to (b) (6), (b) (7)(C), and he wanted to go through the test plan, and just experience for himself what was, uhm, developed to date based on the requirements that had been provided. And so that was probably a good hour meeting, and then (b) (6), (b) (7)(C) stepped out and the rest of continued more of a working level meeting, and that was when, uhm, (b) (6), (b) (7)(C), and I don't quite know what the trigger was, but decided to yell, and at the time experience it, uhm, I felt that it was directed at me, uhm, not the entire group. Uhm, so we had folks who were outside of our office as well as support team members. Uhm, thankfully no one was on the phone... No, there were people on the phone at the time; they were just with my team. Uhm, and he essentially used a number of curse words and told me to shut up, uhm, and to stop bringing up the past, and that we needed to move forward and to not continue to harp on specific details, and he didn't really enumerate those details, but, uhm, just a general statement of that.

(9) (b) (6), (b) (7)(C) stated that (b) (6), (b) (7)(C) specifically said, "Shut the fuck up... Stop fucking talking about those things or bringing up the past. History's not important, we need to look forward."

(10) (b) (6), (b) (7)(C) continued, "Well, everyone was rather surprised and honestly, we had to proceed with the meeting. Then we proceeded to discuss what our next steps were, and I made the recommendation that perhaps (b) (6), (b) (7)(C) ]<sup>12</sup> lead, that we split up the responsibilities and such, in such a fashion that she continued doing certain work that she already was trying to accomplish, which I was currently at that time doing, and that I would focus more on the larger scope of the project versus, uh, the requirement development per say, and he nixed that idea."

(11) Based on (b) (6), (b) (7)(C) disapproval of her suggestion to split the ngNET work with (b) (6), (b) (7)(C) of NAVSEA, (b) (6), (b) (7)(C) believed that she had been fired as the ngNET project lead and that (b) (6), (b) (7)(C) was being given the position. (b) (6), (b) (7)(C) recalled, "Uhm, I felt that he had just fired me from my lead position and given her all of the responsibilities, so walking away from that meeting, uhm, having an opportunity to talk with the other folks who were on my team, they were like, 'Oh, my gosh, what are you gonna do? You're now no longer leading this team. (b) (6), (b) (7)(C) is taking it over.'"

(12) (b) (6), (b) (7)(C) was asked to describe the incident. She said that "people were definitely yelling. Very heated." She stated that the yelling was mostly done by (b) (6), (b) (7)(C), but that (b) (6), (b) (7)(C) was agitated. However, she could not recall if any foul language was used because "...when I'd been around Navy people that stuff doesn't... I... uh, it... it just doesn't occur to me that it's foul language..."

(13) (b) (6), (b) (7)(C) is a Falconwood employee who was assigned as a re-tester for ngNET. (b) (6), (b) (7)(C) also attended the 13 March 2013 meeting. She recalled, "...the meeting was uhm, just a regular old meeting... (b) (6), (b) (7)(C) just mainly wanted to see a demonstration and there was a whole bunch of people on the phone too... so we went through the demonstration... ..and I guess he had another meeting. And that he had to attend too, so he had to leave and then he turned everything over to (b) (6), (b) (7)(C). Uhm, and as soon as (b) (6), (b) (7)(C) was basically out of sight uhm, (b) (6), (b) (7)(C) took over and he took over in a very unprofessional, very uhm, mean manner. He was throwing the 'f' bombs everywhere. He literally told (b) (6), (b) (7)(C) at one point to shut up... And there's contractors in there, there's other people

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<sup>12</sup> (b) (6), (b) (7)(C) is the lead for the Deputy Command Information Officer (DCIO) for NMCI Enterprises for NAVSEA team who will be one of the largest customers for the IT services.

in there, there's people on the phone. Very unprofessional. Very uhm, I was very uncomfortable in that room at that point."

(14) (b) (6), (b) (7)(C) is also a Falconwood employee. She had only been working less than a week on the ngNET team at the time of the meeting. She recalled that initially there was an exchange between (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) when (b) (6), (b) (7)(C) intervened. She stated, "There was some back and forth between uhm, (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C). Like I said I had just started, but I did notice... I think there was a lot of animosity between uhm, (b) (6), (b) (7)(C). Uh, and it obviously came out in the meeting and then (b) (6), (b) (7)(C) kinda stepped in and he just seemed upset about the whole thing as well. And it... it... it was a little awkward for me because I'm not used to be in that type of work environment or work atmosphere."

(15) (b) (6), (b) (7)(C) did recall (b) (6), (b) (7)(C) saying "shut-up" but did not recall him using profanity as had a colleague who was also present. She explained, "He did say shut up. I... I had talked with it uhm, actually uh, shortly after that with one of my colleagues and she said that he uhm, had... he did use a curse word. I don't reme... I don't recall hearing it. I do remember him saying shut up, but I don't actually recall hearing the curse word."

(16) (b) (6), (b) (7)(C) recalled the 13 March 2013 meeting, but denied that he was angry and swearing during it. He stated, "Didn't become angry. Uh, and I didn't use curse words, I know that for a fact."

(17) (b) (6), (b) (7)(C) stated that the completion of the ngNET software/tool wasn't on track and he was concerned that (b) (6), (b) (7)(C) was not acknowledging that publicly. So, he believed it was necessary to change the tone of the meeting. He said, "she kept saying things were on track and they would finish by June and finally it got to the point where I... I couldn't let her say that anymore, so my comments at that meeting, I didn't raise my voice. I just changed the tone of it to make sure that everybody in the room understood that we can't keep saying this at the program office. Uh, the development effort was not gonna finish on time. It wasn't even gonna be close."

(18) When told that witness accounts recalled that he had told (b) (6), (b) (7)(C) to shut the f-up (b) (6), (b) (7)(C) was puzzled. He responded, "I don't know to be honest with you... ..because that's... that's one meeting that I remember very specifically

because I realized in my previous conversations with her, there's no point in... uh, first of all, that kinda behavior doesn't work anywhere. Uhm, you know except maybe in CAPT's Mass, but that's not... that's not the kinda scenario that we're in. But... but specifically with (b) (6), (b) (7), the whole point was to trying to get her to realize what she needed to do to be successful."

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(19) The facts contained in paragraphs 3.a. (4), (5) and (6) concerning workplace bullying also apply to this allegation.

(20) The facts contained in paragraphs 6.a.(1), (2) and (39) through (50) are also applicable to this allegation.

#### **b. Discussion and Analysis.**

(1) As a military member of the USN, (b) (6), (b) (7)(C) is required to comply with all U.S. Navy Regulations. Failure to comply with lawful regulations results in failure to obey a lawful general order or regulation.

(2) Chapter 10, Section 2. "Authority", Paragraph 1023, of the Navy Regulations does not require a minimum number of abusive incidents to establish a violation. However, Mr. Dimoff, our referenced expert on workplace bullying, does define bullying behavior as recurring.

(3) The preponderance of evidence supports that both incidents of abusive behavior did occur. Additionally, (b) (6), (b) (7)(C) comment regarding (b) (6), (b) (7)(C) that (Fourth Allegation, paragraph 6. a. (30)) "...his personality- sometimes he goes off. He's a screamer..." suggests that this type of behavior is a recurring pattern for (b) (6), (b) (7)(C). As noted previously, attempts to humiliate individuals such as yelling at subordinates in front of others is a type of bullying. Additionally, our referenced bullying expert, Mr. Dimoff, asserts that if there has been one report of bullying there have been other unreported incidents. It is important to recognize that all the meeting attendees who had to suffer through this display are also victims, not just (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C).

(4) Somewhat mitigating the incident with (b) (6), (b) (7)(C) is the fact that (b) (6), (b) (7)(C) actions were motivated by his desire

to bring (b) (6), (b) (7)(C) behavior under control. However, the manner in which he addressed (b) (6), (b) (7)(C) only exacerbated the situation, and made the situation worse. Screaming "at the top of your lungs" is never acceptable in a professional environment.

(5) Also, while not applicable to the subject events, the recent issuance of DoDI 1438.06 *Workplace Violence Prevention and Response Policy* dated 16 January 2014 demonstrates that the DoD now recognizes this type of unprofessional behavior is not to be tolerated in the workplace, and should be dealt with swiftly by management.

(6) The allegation that (b) (6), (b) (7)(C), the former (b) (6), (b) (7)(c) acted abusively towards (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) by yelling and cursing during two separate incidents in violation of (i) Article 92, UCMJ, Failure to obey order or regulation, and (ii) U.S. Navy Regulations, Chapter 10, Section 2., Authority, Paragraph 1023. is substantiated.

**c. Conclusion:** This allegation is **substantiated**.

**d. Recommendation:** Forward to COMSPAWAR for action as deemed appropriate.

**e. Disposition:** Pending

**10. Eighth Allegation:** That (b) (6), (b) (7)(C), (b) (6), (b) (7)(c), failed to intervene and stop the unprofessional behavior of his subordinate, (b) (6), (b) (7)(C), (b) (6), (b) (7)(c) for NEN/PMW 205, during a 7 March 2013 meeting in violation of Department of the Navy (DoN) Civilian Human Resources Manual (CHRM), Subchapter 752, Disciplinary Actions. **Substantiated**

**a. Facts:**

(1) The DoN CHRM, Subchapter 752, "Disciplinary Actions", paragraph 7.e. states in part, "Managers and Supervisors are responsible for: (1) Communicating requirements and expectations regarding standards of conduct and performance to employees... (3) Monitoring employee conduct and taking or initiating appropriate corrective action as required."

(2) Subsequent to these events, the DoD issued DoD Instruction (DoDI) 1438.06 *Workplace Violence Prevention and Response Policy* dated 16 January 2014. It states in part, "3. POLICY. It is DoD policy that:

a. DoD Components work with employees to maintain a work environment free from violence, threats of violence, harassment, intimidation, and other disruptive behavior. All employees are responsible for promoting a safe work environment.

b. Violence, threats, harassment, intimidation, and other disruptive behavior will not be tolerated in the workplace; all reports of incidents will be taken seriously and will be dealt with appropriately.

c. Those who engage in such behavior may be:

(1) Immediately removed from the premises.

(2) Denied re-entry pending completion of an appropriate investigation.

(3) Subject to removal from federal service, criminal prosecution, or both...

3.d. DoD employees will comply with the workplace violence prevention and response policies of their organizations..."

(3) DoDI 1438.06 *Workplace Violence Prevention and Response Policy* dated 16 January 2014 also contains a definition of workplace violence in its Glossary, Part II, Definitions. It states, "workplace violence. Any act of violent behavior, threats of physical violence, harassment, intimidation, bullying, verbal or non-verbal threat, or other threatening, disruptive behavior that occurs at or outside the work site."

(4) The facts in the fourth allegation para. 6.a. (1) through (38) also apply to this allegation.

(5) (b) (6), (b) (7) is the Deputy Program Manager for PEO-EIS/PMW 205 and was (b) (6), (b) (7)(C) second line supervisor at the time of the event.

(6) As noted previously, there was a heated discussion between (b) (6), (b) (7)(C) and others after the GRR-0 meeting on 7 March 2013. In addition to (b) (6), (b) (7)(C), (b) (6), (b) (7)(C) were present during the heated discussion.

(7) (b) (6), (b) (7)(C) was sitting next to (b) (6), (b) (7)(C) at the meeting. She stated, "I put my hand on his arm and said, (b) (6), (b) (7)(C), we need to stop this meeting. This behavior is not

acceptable, and we need to clear the room and clear the air.' And he looked at me and said, 'No, no, this is good, he needs to vent.'"

(8) (b) (6), (b) (7)(C) also recalled that she tried to stop the meeting. She said, "the voices got loud and I tried to stop them all and (b) (6), (b) (7)(C), just let them... you know, just continued to... to let them vent as he put it, and then he told me later that, well, (b) (6), (b) (7) had every right to vent because he was outnumbered. There were more 5.0 people in there than there were... than there was him. Well, that's true. I mean (b) (6), (b) (7)(C), me and (b) (6), (b) (7)(C), but I was trying to create levity. (b) (6), (b) (7)(C), by then, was shaking. She was just white she was so upset..."

(9) (b) (6), (b) (7)(C) was asked about (b) (6), (b) (7)(C) reaction to the meeting. He recalled, "she said, 'Hey, come on, let's... calm down' or... or words to that effect, and uh, you know, (b) (6), (b) (7)(C) spoke up and said, 'No, no, no,... let's let people have the emotional moment here and... and we'll get through this, we'll work through this.'"

(10) (b) (6), (b) (7)(C) was asked if someone had asked him to stop the meeting when it became so volatile, (b) (6), (b) (7)(C) stated, "Yes, that was - that was (b) (6), (b) (7)(C) ... It was - it was volatile... (b) (6), (b) (7)(C) said, 'I'm uncomfortable with this.'"

(11) (b) (6), (b) (7)(C) recalled that he made the following response to (b) (6), (b) (7)(C) request, "'You know what, unless we want to talk about this about 30 more times, people are getting this off their chest. The issue is out on the table, let 'em talk. Alright?' So that, that was... that was... that was my response. Now, not pressing, 'cause I, I... believe me, we had multiple discussions about this incident. So, so this is not a (b) (6), (b) (7)(C), shut up and sit down.' This was, 'Hey, listen, you guys brought me to this thing. I'm spending my time, I'm... I've got very little time. You told me to show up. I, I waited. Now folks are talking, let 'em talk.' Because that's the only way I could figure that we could ever get this thing resolved if it was the big issue that it was, and, and now to me, you had this issue where you brought me to a meeting, you told me that Basam had said a bunch of things. The individual who was supposed to corroborate the story basically said... not basically, straight out said, '(b) (6), (b) (7) didn't say it.' So, I'm stuck here goin' 'Okay', uhm, so this call for 'Let's stop the meeting' was sort of, you know... I, I could[n't] I get it. People were excited.

People were... definitely people were swearing, uhm, because it was a... it was an emotional angry moment for a bunch..."

(12) Ms. Jane Brody, in her 8 March 1983 New York Times article titled, "Venting Anger May Do More Harm Than Good" quoted the 1983 book, Anger: The Misunderstood Emotion, by social psychologist Carole Tavris. Ms. Brody noted that Ms. Tavris "sees anger as often more destructive when expressed than when suppressed. Dr. Tavris wrote, 'Talking out an emotion doesn't reduce it, it rehearses it... People who are most prone to give vent to their rage get angrier, not less angry...' More important the effect of venting anger on social interactions is often devastating."

(13) Ms. Brody also noted that Ms. Tavris made reference to "a study among laid-off engineers in San Diego, which showed that the men who were invited to ventilate their anger actually became more hostile toward the company or their supervisors than those who were asked to criticize themselves."

#### **b. Discussion and Analysis.**

(1) (b) (6), (b) (7)(C) was the highest ranking PMW 205 manager in the subject meeting and at the time was (b) (6), (b) (7)(C) second line supervisor.

(2) By all accounts including (b) (6), (b) (7)(C), (b) (6), (b) (7)(C) was angry and swearing during the subject meeting which is not respectful behavior by any reasonable standard. As noted previously, all Navy civilian employees are required to comply with the CHRM.

(3) Also, while not in effect during the subject event, the recent issuance of DoDI 1438.06 *Workplace Violence Prevention and Response Policy* dated 16 January 2014 demonstrates that the DoD recognizes disrespectful behavior is not to be tolerated in the workplace, and should be dealt with swiftly by management.

(4) The CHRM requires supervisors to monitor employee conduct and to initiate appropriate action. (b) (6), (b) (7)(C) requested that (b) (6), (b) (7)(C) stop the meeting. (b) (6), (b) (7)(C) confirmed that (b) (6), (b) (7)(C) made this request. However, (b) (6), (b) (7)(C) chose to let the parties continue the "emotional angry moment" in the hope of resolving the problem.

(5) There is no expectation that (b) (6), (b) (7)(C) should have known about the psychological research that supports the behavior of venting anger actually makes hostile situations worse. However, he should have recognized that the behavior before him (i) was not respectful, (ii) was not acceptable to the others present, and (iii) should have been stopped for these reasons.

(6) Mitigating (b) (6), (b) (7)(C) actions are the facts that we know of no other incidents where (b) (6), (b) (7)(C) failed in his duty to take appropriate action for employee misconduct, and that he honestly thought he was doing the right thing by allowing the heated argument to continue in the hope that the underlying problems would be resolved.

(7) The allegation that (b) (6), (b) (7)(C), (b) (6), (b) (7)(c) Manager, failed to intervene and stop the unprofessional behavior of his subordinate, (b) (6), (b) (7)(C), (b) (6), (b) (7)(c) for NEN/PMW 205, during a 7 March 2013 meeting in violation of Department of the Navy (DoN) Civilian Human Resources Manual (CHRM), Subchapter 752, Disciplinary Actions is substantiated.

c. **Conclusion:** This allegation is **substantiated**.

d. **Recommendation:** Forwarded to PEO-EIS for action as deemed appropriate.

e. **Disposition:** Pending

**11. Ninth Allegation:** That (b) (6), (b) (7)(C), (b) (6), (b) (7)(c) in approximately the last quarter of 2012 violated the terms of the Falconwood support contract by requesting one of its employees to perform a personal service in violation of the terms of the contract and 31 U.S.C. § 1301. **Substantiated.**

a. **Facts:**

(1) 31 U.S.C. § 1301 states in part, "Appropriations shall be applied only to the objects for which the appropriations were made except as otherwise provided by law."

(2) Nonpersonal services contracts are described in FAR 37.101, Service Contracts - General, Definitions. It states in

part, "Nonpersonal services contract means a contract under which the personnel rendering the services are not subject, either by contract's terms or by the manner of its administration, to the supervision and control usually prevailing in relationships between the Government and its employees."

(3) The Falconwood support contract at PMW 205 is contract number (no.) N00178-05-D-4323. It is not a personal services contract.

(4) (b) (6), (b) (7)(C) is the (b)(6), (b)(7)(c) for (b)(6), (b)(7)(c) She was formerly the (b)(6), (b)(7)(c) and the DAPM for Legacy Networks and Data Services.

(5) (b) (6), (b) (7)(C) is a Falconwood employee. She is an (b)(6), (b)(7)(c) currently supporting the (b)(6), (b)(7)(c) - (b)(6), (b)(7)(c) .

(6) In late 2012, (b) (6), (b) (7)(C) was providing support services to (b) (6), (b) (7)(C) . She stated, "I did work uh, (b) (6), (b) (7)(C) at one point. And uhm, she's... she... she likes to yell at people and at one point she had me go move her car and stuff... I was kind of new working with the government because I came over from HP and... all I did was repair computers... Um, so when she asked me I was kind of surprised, but um, I was also just like okay, this woman is not a nice woman, she is very mean, very outspoken. Let's just suck it up and deal with it and let's do it and then, after I get it done and over with, let's go to my upper management and let them know what I did in case the subject was to ever come up because no one was, I don't believe anyone was around when this was asked of me...

(7) (b) (6), (b) (7)(C) continued, "And she (b) (6), (b) (7)(C) ] handed me her keys and I walked out to the parking lot, parking lot near Dunkin Donuts. She had told me she parked in an illegal spot. And I walked out there and she told me what level it was. And I believe it was either a level that was in the bottom or in the first level, I believe it was, and I walked out. And she told me what car she has and it was a, I believe it was a silver Honda, if I remember correctly... when I walked out to her car um, she was in a NCIS parking spot car and that NCIS car actually pulled up behind her and was blocking her in to where you could not move the car. And at the point I saw that and I turned around and I went back. And I told her and I said that um, you

know, I said, 'You have an NCIS car blocking your car'. And I said, 'The best thing is, it's not towed,' and... I told her, 'You might want to go out and check it later on and see if you can move it then.' And she said 'Okay.'"

(8) On 30 January 2013, (b) (6), (b) (7)(C) emailed her Falconwood supervisor, (b) (6), (b) (7)(C), complaining that (b) (6), (b) (7) was treating her as an administrative assistant vice as a network engineer, her contractor position. In bullet number '5' of this email she recounts the car incident. The email states in part, (b) (6), (b) (7), Here is a synopsis of what I been asked to do and what I do now in support of (b) (6), (b) (7)(C).

1. Treats me as her personal Administrative Assistant...  
5. She handed me her keys to her car one day to move it because she parked in an illegal space. Dummy me went to do it, but thank goodness there was an NCIS car blocking hers because she parked illegally in their space. I would not attempt to do that again even if she asked. I thought that was very inappropriate and very unprofessional of her..."

(9) (b) (6), (b) (7)(C) didn't know if (b) (6), (b) (7)(C) was disciplined for requesting that (b) (6), (b) (7)(C) move her car. However, her Falconwood managers told her that they took care of it, and (b) (6), (b) (7)(C) was moved to another team at PMW 205.

(10) When (b) (6), (b) (7)(C) was advised of the allegation, she acknowledged that it occurred. She stated, "That is correct... Uh... I had parked my spa... my car an illegally uh, excuse me, in an illegal space. Uhm, and I had gone out a couple of times to try to move it and couldn't. And yes, I did do that.

(11) When asked why she couldn't move it herself, (b) (6), (b) (7) responded, "I was busy." [Investigator: And do you think it was appropriate to ask (b) (6), (b) (7)(C) to move your car?] (b) (6), (b) (7): "No. It was inappropriate."

(12) (b) (6), (b) (7)(C) further explained that no one in her chain of command learned about this or discuss this incident with her. She stated that she did not receive any discipline for this incident.

## **b. Discussion and Analysis.**

(1) The Falconwood contract is not a personal services contract. Therefore, it is inappropriate for (b) (6), (b) (7)(C) to supervise or control contractor employees in the course of

business. Additionally, as recognized by (b) (6), (b) (7)(C), it is even more inappropriate to request personal favors from a contractor employee. This type of request is not related to official business and therefore is a misuse of government funds.

(2) (b) (6), (b) (7)(C) action also demonstrated a lack of concern for the welfare of (b) (6), (b) (7)(C) because (b) (6), (b) (7)(C) knew it was an inappropriate request, and put (b) (6), (b) (7)(C) in a position where (b) (6), (b) (7)(C) could have been accused of mischarging against the Falconwood contract.

(3) The allegation that (b) (6), (b) (7)(C) violated the terms of the Falconwood support contract by requesting one of its employees to perform a personal service in violation of the terms of the contract and 31 U.S.C. § 1301 is substantiated.

**c. Conclusion:** This allegation is **substantiated**.

**d. Recommendation:** Forward to PEO-EIS/PMW 205 Code for action as deemed appropriate.

**e. Disposition:** Pending

**12. Tenth Allegation:** That (b) (6), (b) (7)(C), USN, (b) (6), (b) (7)(c) (b) (6), (b) (7)(c) from approximately February 2011 to September 2011 wasted the (b) (6), (b) (7)(c) acquisition labor force by not directing the NGEN team to work on the request for proposal (RFP) leaving employees idle in violation of 5 USC 2301b (5), and Article 92, UCMJ, Failure to obey order or regulation. **Not substantiated.**

**a. Facts:**

(1) 5 USC 2301 para. (b) states in part, "Federal personnel management should be implemented consistent with the following merit system... (5), The Federal work force should be used efficiently and effectively."

(2) Article 92 of the Punitive Articles of the Uniform Code of Military Justice (UCMJ) states in part,

"Any person subject to this chapter who--

(1) violates or fails to obey any lawful general order or regulation;

(2) having knowledge of any other lawful order issued by any member of the armed forces, which it is his duty to obey, fails to obey the order; or

(3) is derelict in the performance of his duties; shall be punished as a court-martial may direct."

(3) The DoN CHRM, Subchapter 752, "Disciplinary Actions", paragraph 7.e. states in part, "Managers and Supervisors are responsible for: (1) Communicating requirements and expectations regarding standards of conduct and performance to employees..."

(4) 5 CFR 2635.705, Use of Official Time, paragraph (b) Use of subordinate's time states, "An employee shall not encourage, direct, coerce, or request a subordinate to use official time to perform activities other than those required in the performance of official duties or authorized in accordance with law or regulation."

(5) The facts in para. 2. c. (13) also applies to this allegation.

(6) (b) (6), (b) (7)(C) stated that early on in his tenure as (b)(6), (b)(7)(c), he determined that the approved acquisition strategy "was not executable."

(7) (b) (6), (b) (7)(C) was the former (b)(6), (b)(7)(c) (b)(6), (b)(7)(c). He recalled that when (b) (6), (b) (7)(C) began his tenure as PM his initial focus was to change the approved acquisition strategy. (b) (6), (b) (7)(C) stated, "When he [(b) (6), (b) (7)(C)] took over, I believe that he believed that he could change it from acquisition -- he could change NGEN from acquisition to services and he spent a lot of time and energy and resources trying to make that happen to no avail."

(8) (b) (6), (b) (7)(C) continued, "But it was frustrating to those of us who are quite familiar with it to have gone through the battles, you know, with (b) (6), (b) (7)(C) on, you know, how this was going to happen, how the Navy wanted this to happen. And then -- because it was not a unanimous -- it was not a unanimous decision on the Navy's part, there was quite a lot of debate during (b) (6), (b) (7)(C) time as to whether this should be a services or an acquisition program. And ultimately the Secretary made a decision and he came down on the side of acquisition program and it's kind of like the judge banging the gavel. Okay, the decision is made; it's an acquisition program,

move out. And that's what (b) (6), (b) (7)(C) did and that's what we did with NGEN. Then (b) (6), (b) (7)(C) comes along and he wants to revisit all those old arguments about whether we are going to do services or we will continue with acquisition program. And we tried to tell him that the decision had already been made that we fought all those battles and we lost. And he said, 'Too bad... We are going to do it this way.'... And so there was a lot of -- a lot of duplicate efforts, a lot of wasted time and a lot of wasted energy."

(9) (b) (6), (b) (7)(C) was the former Transition lead. He did not think that (b) (6), (b) (7)(C)' efforts to reexamine the acquisition strategy were inappropriate. He stated, "I think he (b) (6), (b) (7)(C) actually acknowledged that there were some challenges in the acquisition strategy, and that to kind of best meet the time constraints of the contract ...that he had to basically change the strategy to meet the Navy's goals. That's how I saw it. I didn't see it as him squandering, because I think from the beginning, he advocated, we have to do something; we can't kind of go along this path... I think he was proactive about talking it back. I think he spent a lot of this first three months talking to (b) (6), (b) (7)(C) and leadership, going to meetings in the Pentagon, changing, advocating his new approach."

(10) However, (b) (6), (b) (7)(C) opined that (b) (6), (b) (7)(C) efforts to change the acquisition strategy were stressful for the NGEN staff. (b) (6), (b) (7)(C) stated, "...his (b) (6), (b) (7)(C) conviction was- is, he truly believed we were doing the wrong things and that he needed to show why and so, he was going off. And during that period, is where, perhaps, even though today, you know, there are some adjustments to the original strategy, but it's not been drastically altered, but that's today. But during that journey, right, it was very hard and stressful on people... ..because of the feeling of not value added, trying to change things, trying to prove things. That period is very stressful...when you are trying to do all those things and giving the message to people that you're on the wrong track all along."

(11) Based on his revised vision for the NGEN program, (b) (6), (b) (7)(C) did not believe that he needed certain IPT functions for the NGEN acquisition. (b) (6), (b) (7)(C) stated, "One of those areas was the ITIL [Information Technology Infrastructure Library] ITSM [Information Technology Systems Management]. He stated, "Well I think the biggest area to look at would be when

he (b) (6), (b) (7)(C) ] ordered us to stop the ITIL ITSM work ...about February to May [2011] and around May was when he sort of restarted it and got behind it."

(12) (b) (6), (b) (7)(C) was the ITSM IPT Lead. (b) (6), (b) (7)(C) recalled that (b) (6), (b) (7)(C) directed the stoppage of planned ITSM workshops. He explained, "...he didn't see a lot of value in ITSM because, to use his words, "[He] doesn't see anything changing in the future"; he sees things being the same as they were at that point in time... ..efforts were under way prior to him coming on board... to build out a lot of the processes that were required to support NGEN... And I scheduled a bunch of workshops... But I was explicitly told to stand down on those meetings -- um -- and -- and essentially that was a majority of the effort, right, because the Seam management, the process development, all the stuff.. required those workshops to happen. So we had a work stoppage for a series of months -- um -- based off of that direction. And that was clearly directed to halt."

(13) (b) (6), (b) (7)(C) had 3 subordinates. When asked what his staff worked on during the 'stand down' period, he responded, "Um -- in some cases it was -- it was, you know, I was trying to find things for them to stay busy with -- um -- um -- but were -- they were not progressing on what the schedule had us, which was essentially the, you know, to document the as-is environment and to further the processes because those workshops weren't happening. So we were trying to stay busy working on other things, doing more research -- um -- uh -- but it wasn't furthering the processes."

(14) (b) (6), (b) (7)(C) estimated that 70 percent of his staff was underutilized. He explained, "Um -- I would say close to 70 percent probably were significantly underutilized -- um -- because 70 percent were really dedicated to trying to build out the processes, and you couldn't move forward with the processes without the workshops."

(15) (b) (6), (b) (7)(C) is the former NGEN Acquisition Manager for PEO-EIS/PMW 205. During her initial meeting with (b) (6), (b) (7)(C), she recalled that he openly wondered why he needed an Acquisition Manager. (b) (6), (b) (7)(C) remembered, "But my first meeting with him, he said, 'Why do I need you? Why do I need an acquisition manager?' And -- um -- I said, 'Well, because, you know, this is an ACAT 1 program.' And he said, 'Well, I'm not gonna do an acquisition strategy, and I'm not gonna do a Milestone C.' I think he thought that... he was just

gonna continue on... NMCI... as a service contract. But... he soon found out after he met with... OSD and (b) (6), (b) (7)(C) ... that's not the path we're gonna go down."

(16) Not long after that discussion (b) (6), (b) (7)(C) recalled, "Well, he (b) (6), (b) (7)(C) ] told me... not to work on the acquisition. I had assigned acquisition strategy... And I said, 'uh -- do you want me to update this acquisition strategy?' And... he said, 'No'.... I would ask him all the time... at meetings, 'Do you want me to update the acquisition strategy?'... ..he would say, 'No, not yet.'"

(17) However, (b) (6), (b) (7)(C) stated that she continued to update the acquisition strategy based on information that she heard through "the grapevine".

(18) (b) (6), (b) (7)(C) recalled his initial meeting with (b) (6), (b) (7)(C). He explained, "when we had that initial meeting back in March, (b) (6), (b) (7)(C), he didn't even see any value in our team.... ..he doesn't understand why we needed a transition team kind of boggled my mind, considering that we were transitioning. So our first meeting, we were starting off bad."

(19) However, (b) (6), (b) (7)(C) stated that his staff continued to stay "the course" working the approved acquisition strategy plan until approval was obtained for the revisions.

(20) (b) (6), (b) (7)(C), former test and evaluation (b) (6), (b) (7)(C) for PMW 205 remarked that (b) (6), (b) (7)(C) was marginalized by (b) (6), (b) (7)(C) and given nothing to do. (b) (6), (b) (7)(C) noted, "work that was assigned was then taken away from me... ..the end product was to be for him [(b) (6), (b) (7)(C)] and then [he] didn't want it anymore or didn't want it done that way anymore. So, he gave it to somebody else or took it away from the government and gave it to contractor." Due to his long commute and the unsatisfactory work conditions, (b) (6), (b) (7)(C) decided to retire in May of 2012.

(21) (b) (6), (b) (7)(C), former (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C), was asked if he saw any employees idle. He stated, "I think one in particular was (b) (6), (b) (7)(C) " (b) (6), (b) (7)(C) was removed from his position as the (b) (6), (b) (7)(C) Transport lead by (b) (6), (b) (7)(C). (b) (6), (b) (7)(C) noted that after that he was moved to several different positions within (b) (6), (b) (7)(C). During this period, he did not see a decline in his performance evaluations nor did his compensation decrease.

(22) (b) (6), (b) (7)(C) stated that he understood that the strategy changes would create anxiety among the staff. He said, "Yeah. I do. And... and again, we... we always in the terms of we're not leavin' anybody... uh... uh, the... the idea is to become more efficient and find the best use of the people that we had where we had them... But, that doesn't mean that your job today is going to be the same as your job tomorrow. We may change your role, we may find something that fits better both for the a... agency and for the individual."

## **b. Discussion and Analysis.**

(1) As discussed in Allegation 1 paragraph 3. b. (9), we consider it a failure that (b) (6), (b) (7)(C) did not adequately lay the foundation of leadership before making organizational changes.

(2) However, as discussed in para. 2.c.(13), (b)(6), (b)(7)(c) committed no violation in expending money and assigning resources to develop a revised acquisition strategy prior to the completion of Milestone C.

(3) Some degree of waste or downtime is always present in every function. Therefore, materiality is a consideration when assessing wastefulness. While witness accounts indicate that (b)(6), (b)(7)(c) ' direction to stop work on certain functions did cause underutilization of certain individuals, the evidence does not show that it was material or pervasive throughout the PMW. Additionally, the majority of witness accounts support that the affected staff continued to perform based on the approved plan or did relevant related work.

(4) None-the-less, (b) (6), (b) (7)(C) created unnecessary anxiety and stress with his capricious remarks to certain staff members that their particular IPT function would not be needed. He carelessly made these remarks without knowing if any of his ideas would result in approved changes to the acquisition plan.

(5) The allegation that (b) (6), (b) (7)(C), former (b)(6), (b)(7)(c) wasted the (b)(6), (b)(7)(c), NGEN acquisition labor force for 6 months by not directing the NGEN team to work on the request for proposal (RFP) leaving employees idle in violation of 5 USC 2301b. (5) and Article 92, UCMJ, Failure to obey order or regulation is not substantiated.

**c. Conclusion:** This allegation is **not substantiated**.

d. **Recommendation:** None

e. **Disposition:** None

**13. Eleventh Allegation:** That (b) (6), (b) (7)(C) [REDACTED], USN, (b) (6), (b) (7)(C) [REDACTED], during the period February to September 2011 allowed contractor personnel to perform inherently government functions in violation of the (i) contract terms, (ii) FAR 7.503(a), and (iii) Article 92, UCMJ, Failure to obey order or regulation. **Not substantiated.**

**a. Facts:**

(1) Federal Acquisition Regulations (FAR), Subpart 7.5-Inherently Governmental Functions, paragraph 7.503 Policy, states in part, "(a) Contracts shall not be used for the performance of inherently governmental functions... (c) The following is a list of examples of functions considered to be inherently governmental functions or which shall be treated as such. This is not all inclusive: ... (6) The determination of Federal program priorities for budget requests... (7) The direction and control of Federal employees... (16) The determination of budget policy, guidance and strategy..."

(2) Article 92 of the Punitive Articles of the Uniform Code of Military Justice (UCMJ) states in part,

"Any person subject to this chapter who-

(1) violates or fails to obey any lawful general order or regulation;

(2) having knowledge of any other lawful order issued by any member of the armed forces, which it is his duty to obey, fails to obey the order; or

(3) is derelict in the performance of his duties; shall be punished as a court-martial may direct."

(3) The Manual for Courts Martial, Part IV, Punitive Articles para.16, Failure to obey order or regulation states in part,

"b. Elements.

(1) Violation of or failure to obey a lawful general order or regulation.

(a) That there was in effect a certain lawful general order or regulation;

(b) That the accused had a duty to obey it, and

(c) That the accused violated or failed to obey the order or regulation."

Additionally, in part c. it states in part,

"General orders or regulations are those orders or regulations generally applicable to an armed force which are properly published by the President or the Secretary of Defense, of Homeland Security, or of a military department..." and

"Knowledge of a general order or regulation need not be alleged or proved, as knowledge is not an element of this offense and a lack of knowledge does not constitute a defense." U.S. Navy Regulations, Chapter 1, Section 1., paragraph 0101 "United States Navy Regulations shall be issued by the Secretary of the Navy with the approval of the President." In 1981, this provision was amended to eliminate the requirement for presidential approval.

(4) (b) (6), (b) (7)(C), (b) (6), (b) (7)(C) PEO-EIS-(b) (6), (b) (7)(C) stated, that NGEN was heavy with contractor personnel, "to say that the lines between government work and contractor work were blurred is an understatement." However, (b) (6), (b) (7)(C) could not give any specific examples of contractors performing inherently governmental function.

(5) (b) (6), (b) (7)(C) was a (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) employee and (b) (6), (b) (7)(C) former (b) (6), (b) (7)(C). She performed under contract no. N00178-04-D-4024, task NS27.

(6) (b) (6), (b) (7)(C), former NGEN (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) PEO-EIS/PMW 205, stated that (b) (6), (b) (7)(C) would frequently direct the federal employees to provide data or responses.

(7) (b) (6), (b) (7)(C) former (b) (6), (b) (7)(C), also recalled (b) (6), (b) (7)(C) requesting data but thought it was understood that it was at the behest of (b) (6), (b) (7)(C). He said, -- I remember (b) (6), (b) (7)(C) could come out with asking for things from people but I think that was understood it's because (b) (6), (b) (7)(C) is asking for it and she's doing it on his behalf."

(8) (b) (6), (b) (7)(C), former (b) (6), (b) (7)(C) (b) (6), (b) (7)(C), recalled, "...there were times it was a little bit awkward because, uh, (b) (6), (b) (7)(C) would go to meetings with the Captain... ..and then come back and seem to be assigning people to get things done. Now, she was very energetic and seemed to be doing it for, you know, the good of the program, and she was

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<sup>13</sup> (b) (6), (b) (7)(C) left her employment with BAH in support of PMW 205 in September 2012.

quite organized. So, but it just, it did feel a little weird and, uhm, yeah, I think that was probably crossing the line a little bit, also."

(9) On 23 June 2011, (b) (6), (b) (7)(C) sent out the following all hands email, it states, "All, Sometimes it is necessary for me to put out taskers through the SPR personnel. Some of the SPR personnel are contractors. If they ask for a product, you can be assured it is because I or one of the DPMs asked for it. Please treat it as such. If there is a question as to whether or not I have requested the data - please ask me. I would be happy to clarify. Thanks for all you do. Cheers, Heinous (b) (6), (b) (7)(C) "

(10) We asked (b) (6), (b) (7)(C) what prompted the email. He responded, "Because of the staff was havin' trouble n... fulfilling my request... I would ask for things. I would ask them to go get things and they'd say... they'd have to come back to me 'cause they wouldn't... they wouldn't get what they were... I said look..." [Investigator: But it sounds like you're asking contractor personnel to get the information.] (b) (6), (b) (7)(C) : "I'm... I need a brief on X. Go tell so and so I need a brief on X. That happens every day in every organization in the government. That's not inherently governmental."

(11) (b) (6), (b) (7)(C) believed that the complaints were primarily because of (b) (6), (b) (7)(C) requests, but contractor personnel were heavily relied upon because, "We were staffed about 10 [contractors] to one [federal employee]... don't quote me on those numbers because I don't have them in front of me, but I will tell you we have a lot of contractors."

(12) (b) (6), (b) (7)(C) described the benefits of using contractors, "the work, most of it, was analysis type work, which well suited for contractors. And the contractors' big advantages when the work shrinks, we can shrink the contractor workforce a whole lot easier than we can shrink a government workforce. So, from a fiscal responsibility standpoint, I think it made sense. I... I... I do not believe that I ever had contractors do inherently governmental work. I absolutely don't believe that."

## **b. Discussion and Analysis.**

(1) While there may have been an appearance of impropriety by having (b) (6), (b) (7)(C) request data and responses from

federal employees, there is insufficient evidence to support that (b) (6), (b) (7)(C) was independently directing federal employees or that she was making decisions.

(2) Additionally, (b) (6), (b) (7)(C)' email supports that (b) (6), (b) (7)(C) was acting based on his direction.

(3) The allegation that (b) (6), (b) (7)(C), former (b) (6), (b) (7)(c) (b) (6), (b) (7)(c), allowed contractor personnel to perform inherently government functions in violation of the (i) contract terms, (ii) FAR 7.503(a), and (iii) Article 92, UCMJ, Failure to obey order or regulation is not substantiated.

c. **Conclusion:** This allegation is **not substantiated**.

d. **Recommendation:** None

e. **Disposition:** None

**14. Twelfth Allegation:** That (b) (6), (b) (7)(C), USN, former (b) (6), (b) (7)(c), during the period February 2011 through May 2013 had contractor support employees drive him to personal venues in violation of the terms of the related contracts, and 31 U.S.C. § 1301, and Article 92, UCMJ, Failure to obey order or regulation. **Substantiated.**

a. **Facts:**

(1) 31 U.S.C. § 1301 states in part, "Appropriations shall be applied only to the objects for which the appropriations were made except as otherwise provided by law."

(2) Nonpersonal services contracts are described in FAR 37.101 Service Contracts – General, Definitions. It states in part, "*Nonpersonal services contract* means a contract under which the personnel rendering the services are not subject, either by contract's terms or by the manner of its administration, to the supervision and control usually prevailing in relationships between the Government and its employees."

(3) Article 92 of the Punitive Articles of the Uniform Code of Military Justice (UCMJ) states in part,  
"Any person subject to this chapter who–

(1) violates or fails to obey any lawful general order or regulation;

(2) having knowledge of any other lawful order issued by any member of the armed forces, which it is his duty to obey, fails to obey the order; or

(3) is derelict in the performance of his duties; shall be punished as a court-martial may direct."

(4) The Manual for Courts Martial, Part IV, Punitive Articles para.16 Failure to obey order or regulation states in part,

"b. *Elements.*

(1) *Violation of or failure to obey a lawful general order or regulation.*

(a) That there was in effect a certain lawful general order or regulation;

(b) That the accused had a duty to obey it, and

(c) That the accused violated or failed to obey the order or regulation."

Additionally, in part c. it states in part,

"General orders or regulations are those orders or regulations generally applicable to an armed force which are properly published by the President or the Secretary of Defense, of Homeland Security, or of a military department..." and

"Knowledge of a general order or regulation need not be alleged or proved, as knowledge is not an element of this offense and a lack of knowledge does not constitute a defense." U.S. Navy Regulations, Chapter 1, Section 1. Paragraph 0101, "United States Navy Regulations shall be issued by the Secretary of the Navy with the approval of the President." In 1981, this provision was amended to eliminate the requirement for presidential approval.

(5) According to (b) (6), (b) (7)(C), Director, Washington Operations, Space & Naval Warfare Systems Command (SPAWAR), Washington Liaison Office (WLO) no government vehicle was specifically allocated to PEO-EIS/PMW 205. He stated, "The only vehicle that I am aware of being allocated to any SPAWAR command element would be the van I mentioned used by SSC Atlantic."

(6) As stated previously, (b) (6), (b) (7)(C) was a BAH employee and (b) (6), (b) (7)(C)' former executive assistant.

(7) (b) (6), (b) (7)(C) was performing under contract no. N00178-04-D-4024, task NS27. It is not a personal services contract.

(8) While some witnesses stated that they heard rumors that (b) (6), (b) (7)(C) was driving (b) (6), (b) (7)(C) to personal venues. None of the witnesses interviewed stated that they actually saw (b) (6), (b) (7) driving him to anything other than a business meeting which she also attended as his EA.

(9) As noted previously, (b) (6), (b) (7)(C) didn't have a car. He stated, "I took mass transit. Uhm, I lived in Manassas over an hour and change away. Uh, the last train runs at I wanna say 6:55 out of L'Enfant Plaza, which meant you had to get to the Navy Yard Metro then catch a metro up to L'Enfant and then home."

(10) However, (b) (6), (b) (7)(C) stated that on occasion he would get a lift to meetings from contractor personnel. He stated, "So, there were occasions where uhm, contractors, not just (b) (6), (b) (7)(C), and again, less than a dozen times and it never after I moved into uhm, Alexandria. Uhm, would for... because we were workin' late, because I was late for meetings or would be late for a meeting for mission accomplishment. They said, 'Hey, let me give you a ride.' I never solicited it, it was never considered part of the... the... no... no one had to. They could've never offered and I'd a been just fine. It was offered and probably my mistake. I accept it... It happened very rarely I would say less than a dozen times."

(11) (b) (6), (b) (7)(C) continued, "I'm gonna say it almost never happened and again, it was always offered, never asked and uh, and many times it was in the performance of my duties just to try and either get to the Pentagon or get to the PEO, so I wouldn't be late..."

(12) (b) (6), (b) (7)(C) also asserted that the rare drop offs at the Metro occurred after hours, and were not claimed by (b) (6), (b) (7)(C) as billable hours to the BAH contract.

## **b. Discussion and Analysis.**

(1) The BAH contract is not a personal services contract. Therefore, it is inappropriate for (b) (6), (b) (7)(C) to supervise or control contractor employees in the course of business. Additionally, it is even more inappropriate to request personal favors from a contractor employee, such as a lift to the Metro to catch the train home. This type of request is not related to official business, and therefore, could result

in a misuse of government funds if these services are billed by the contractor.

(2) If the contractor employee's presence was also required at the offsite meetings to which they drove (b) (6), (b) (7)(C), we would not consider that a contract violation. However, there could be exceptions in those instances where the contractor employee had to extend their time at the meeting location solely to accommodate (b) (6), (b) (7)(C)' schedule.

(3) By his own admission, (b) (6), (b) (7)(C) made "a mistake" in accepting the contractor employee offers for "rides", and therefore, he violated the contract terms.

(4) Somewhat mitigating this finding is the fact that the lack of witness accounts supports (b) (6), (b) (7)(C)' assertions that the events were rare, infrequent and that some occurred after hours. However, the dates of these incidents are unknown. Therefore, an examination as to whether the contractor personnel billed the government for these services cannot be determined.

(5) The allegation that (b) (6), (b) (7)(C), former (b) (6), (b) (7)(C), had contractor support employees drive him to personal venues in violation of the terms of the related contracts, and 31 U.S.C. § 1301, and Article 92, UCMJ Failure to obey order or regulation is substantiated.

**c. Conclusion:** This allegation is **substantiated**.

**d. Recommendation:** Forward to COMSPAWAR for action as deemed appropriate.

**e. Disposition:** Pending

**15. Thirteenth Allegation:** That (b) (6), (b) (7)(C), USN, former (b) (6), (b) (7)(C), (b) (6), (b) (7)(C), former (b) (6), (b) (7)(C), (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) Service Development for PEO-EIS/PMW 205 during the period February 2011 to September 2011 improperly disclosed personally identifiable information (PII) concerning PMW 205 employees' employment or personnel records in violation of DoD 5400.11-R "Department of Defense Privacy Program" dated May 14, 2007 and SECNAVINST 5211.5E "Department of the Navy Privacy Program" dated December 28, 2005. **Not substantiated.**

**a. Facts:**

(1) PII is defined in DoD 5400.11-R as:

"Personal Information. Information about an individual that identifies, links, relates, or is unique to, or describes him or her, e.g., a social security number; age; military rank; civilian grade; marital status; race; salary; home phone numbers; other demographic, biometric, personnel, medical, and financial information, etc. Such information is also known as personally identifiable information (i.e., information which can be used to distinguish or trace an individual's identity, such as their name, social security number, date and place of birth, mother's maiden name, biometric records, including any other personal information which is linked or linkable to a specified individual)."

(2) The scope of PII is defined in SECNAVINST 5211.5E as: "Personally identifiable information kept by DON in PA systems of records."

(3) According to (b) (6), (b) (7)(C), he attended several meetings where (b) (6), (b) (7)(C) would discuss "employee matter in front of others who had no supervisory relationships to those people." He recalled that these meetings would typically include (b) (6), (b) (7)(C)' EA, (b) (6), (b) (7)(C), a BAH employee.

(4) (b) (6), (b) (7)(C) clarified that no employee personnel records were brought to these meetings, and there was no specific discussion or disclosure of the employees' performance ratings, shares given or bonus awards.

(5) (b) (6), (b) (7)(C) did not recall any meetings where PII was disclosed. He noted that meetings were held concerning the reorganization of PMW 205 and who would work well in certain positions, but there were no meetings that included PII.

(6) (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) also could not recall any meetings where personnel files were present or PII was disclosed.

(7) A few witnesses stated that they heard rumors of this allegation, but had no specific information related to any actual incidents.

**b. Discussion and Analysis.**

(1) In this case, there is no evidence of disclosure of PII kept by DON in Privacy Act systems of records. Accordingly, there was no violation of DoD 5400.11-R or SECNAVINST 5211.5E. The allegation is not substantiated.

c. **Conclusion:** This allegation is **not substantiated**.

d. **Recommendation:** None

e. **Disposition:** None

**16. Fourteenth Allegation:** (b) (6), (b) (7)(C) , (b)(6), (b)(7)(c) during the period of February 2011 to July 2013, did not work for all hours for which he was paid in violation of 5 CFR 2635.705(a), Use of official time. **Not substantiated.**

a. **Facts:**

(1) 5 CFR Part 2635.705(a) states that an employee shall use official time in an honest effort to perform official duties.

(2) 5 CFR Part 2635.101(b) (5) states that employees shall put forth honest effort in the performance of their duties.

(3) SPAWAR Instruction 12600.1D, paragraph 5. Policy states in part, "Supervisors are responsible for the administration and authorization of leave and the timely and accurate preparation, certification, and submission of T&A [Time and Attendance]."

(4) SPAWAR Instruction 12600.1D, enclosure Work Schedule (1) paragraphs 1 and 2, state in part, "1. It is the policy of the Commander, SPACE and Naval WARFARE Systems Command that all supervisors shall assure office coverage from 0700 to 1600 Monday through Thursday and 0700 to 1500 on Fridays... 2. Supervisors shall approve and monitor employee work schedules and arrival/departure times.

(5) (b) (6), (b) (7)(C) is the PEO-EIS Total Force Manager. He stated that there is no recurring telework permitted across PEO-EIS. However, ad hoc or situational telework is allowed. Employees who work situational telework should record telework as telework on their timesheets. To his knowledge

"nothing official" has been established in terms of special working accommodations for (b) (6), (b) (7)(C) because he is a single father of five. Core work hours across PEO-EIS are 9AM to 3PM. This means that employees can start no later than 9AM and leave no earlier than 3PM.

(6) We obtained (b) (6), (b) (7)(C) telework agreement dated 8 March 2012. (b) (6), (b) (7)(C) is authorized for "situational" telework vice "regular and recurring" telework.

(7) (b) (6), (b) (7)(C) stated, "I see on a daily basis where he (b) (6), (b) (7)(C) ], uhm, walks in, uhm, anywhere between, uhm, 9:00 and 9:30 or... or sometimes even later than that, uhm, so that's... that's reporting, uhm, and there's many afternoons that I don't see him here, so I don't know if he's offsite at another meeting, which is possible, or if he's, you know, shortened his... his working schedule for the day. I don't know."

(8) (b) (6), (b) (7)(C) also noticed that (b) (6), (b) (7)(C) isn't always present during the core working hours. When asked where she thought he was, she replied, "I think he's at home personally, you know I should be careful what I say... he's a government employee and I hardly ever see him, so, it's a very different working environment at the Navy Yard than it was in Crystal City. I mean, with the way the cubicles are laid out you cannot see anybody. You actually have to hunt people down to find them, but we've had meetings, I've had meetings and very rarely would he be in them or he would call into them almost all the time."

(9) (b) (6), (b) (7)(C) supervised (b) (6), (b) (7)(C) from approximately August of 2012 until 2 May<sup>14</sup> 2013.

(10) When asked what (b) (6), (b) (7)(C) work schedule was while he worked for him, (b) (6), (b) (7)(C) replied, "Uhm, I... n... I know we have published core hours of nine to three. Uh, people are either supposed to be in an eight hour day or a nine d... t... day depending on whether on... Best work schedule or not, but it's kinda left up to the individuals outside of that. I know initially when I showed up uh, his attendance was poor."

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<sup>14</sup> (b) (6), (b) (7)(C) stated that he stopped being (b) (6), (b) (7)(C) supervisor sometime in January 2013 when (b) (6), (b) (7)(C) began his tenure as DPM at PMW 205. (b) (6), (b) (7)(C) subsequently took over the role of supervising (b) (6), (b) (7)(C) from (b) (6), (b) (7)(C). However, (b) (6), (b) (7)(C) provided email that supports he did not officially become (b) (6), (b) (7)(C) until 2 May 2013.

(11) (b) (6), (b) (7)(C) stated that he had tried to examine (b) (6), (b) (7) attendance by looking at the card swiping log for entry to the program office spaces. However, the log only shows the time the spaces are entered. Employees do not swipe when leaving the spaces. He stated "the card swiping... ..indicated that there were days were he's only putting in four or five hours, but it... it's not possible to tell exactly... You can't tell when they leave..."

(12) (b) (6), (b) (7)(C), (b) (6), (b) (7)(C), is (b) (6), (b) (7)(C) current (b) (6), (b) (7)(C). We asked him if he had observed (b) (6), (b) (7)(C) arriving at work late. (b) (6), (b) (7)(C) responded, "Uhm, yes, I... well, it depends. Depends on what you call late. We have core hours that are from 9:00 to 3:00, right? So as long as you're there, uhm, by 9:00, uhm, and so things... uh, he'll tell me or he'll call in. So, example we have, uh, stand up meetings at 8:30, uh, it used to be 8:00 every Tuesday and Thursday, right? So he'll call in, uh, from the road when he's driving in, uh, to make sure that he's a part of those 8:00 or 8:30 phone calls, right? And then he's gonna work his hours, right? So I don't... I don't... to be quite honest, I got 160 people that are on that floor. I don't go around looking at everybody's cube to see who's where, and you know, that's part of what you do is... you know, you're supposed to work your hours, be there during the core hours."

(13) (b) (6), (b) (7)(C) continued, "what we ask for is, uh, or at least what I ask for is that if he's... 'cause we'll do some things and we'll simply say, 'Hey, listen, if you're gonna be in an alternate place or another meeting offsite... uhm, those kind of things, then yes, certainly let me know where you're gonna be.' But we don't... we don't have an official telework policy. So I've had... I've had folks call, right, and they go, 'Hey listen, I'm working from home.'"

(14) (b) (6), (b) (7)(C) described his work schedule. He stated, "... I have (b) (6), (b) (7)(C). I'm a single father. Uhm, so during the school year I have to drop my kids off, and because of that my... my leadership has always known in the program office that that puts me in the... in the... in the yard between nine and 9:30... ..summertime, I'll get in the office 7:00 - 7:30... ..I don't take a lunch break and I - I usually work 'til about 4:00 or 4:30 and then I- I- I have hours and things that I work at- at home... I'm a single father, I'm the only one that can take my kids to school, so if- if there's ever meetings in the morning that I need to dial in, like there's a Network standup that I dial into

every morning, I never miss anything that happens in the morning, but I- I- I have to take my kids to school... I never work less than a full eight-hour workday... And I was given permission and told that that was okay by my leadership."

(15) (b) (6), (b) (7)(C) stated that he does not annotate his timecard in Navy ERP for telework. He stated, "...I have not done that no."

(16) We obtained (b) (6), (b) (7)(C) timesheet from 1 August 2012 to 31 July 2013. (b) (6), (b) (7)(C) charged "regular telework" on 6 March 2013. No other premium codes for telework were charged by him during this period. We also noted that (b) (6), (b) (7)(C) charged (b) (6), (b) (7)(C) of sick leave, but (b) (6), (b) (7)(C) annual leave during this one year period. (b) (6), (b) (7)(C) was the primary timecard approver. (b) (6), (b) (7)(C) was (b) (6), (b) (7)(C) supervisor prior to (b) (6), (b) (7)(C) assuming his duties at PEO\_EIS/PMW 205.

(17) (b) (6), (b) (7)(C) stated that "based on problems he [(b) (6), (b) (7)(C)] had had with previous Supervisor (b) (6), (b) (7)(C) there was several instances where we had to go see the HR folks over at the PEO."

(18) (b) (6), (b) (7)(C) recalled that "...the first time may have been September or October [2012]. Uhm, and I think he [(b) (6), (b) (7)(C)] said at the time that you know, he was... he had meetings in offsite places and that... I really had no information to counter that and I was supervising a lot of people at the time, so." However, management never asserted to (b) (6), (b) (7)(C) that he was not working all of his hours. Instead management changed its focus to better defining (b) (6), (b) (7)(C) role, and how his talents could best be put to use in the program office. (b) (6), (b) (7)(C) stated that (b) (6), (b) (7)(C) attendance improved over time.

(19) (b) (6), (b) (7)(C) recalled that in 2012 (b) (6), (b) (7)(C) did question him about where he was. He explained, "...there was a period of time where I was stationed at NSF Arlington because I was supporting the transition effort and... and (b) (6), (b) (7)(C) made a comment, uhm, in one of our conversations where sometimes I don't know where you are, and at the time he was not aware that I wasn't working out of the program office. I was fulltime at the NSF Arlington working on the Transition Tiger Team. That's the only time my time and attendance came up, and then after that discussion, you know, it... it... it was a dead issue because he just didn't know that I was... I was stationed there."

(20) (b) (6), (b) (7)(C) stated that under the new leadership, they are attempting to apply greater structure to the time entered in Navy ERP.

**b. Discussion and Analysis.**

(1) There has been a lack of management oversight over (b) (6), (b) (7)(C) time charges:

- By his own testimony, (b) (6), (b) (7)(C) is teleworking either in his vehicle or at home on a "regular and recurring" basis during the school year. His telework agreement shows that he is not approved for regular and recurring telework. He is approved for situational telework.
- (b) (6), (b) (7)(C) one entry for "regular and recurring" telework on 6 March 2013 was approved by (b) (6), (b) (7)(C). (b) (6), (b) (7)(C) should not have approved this entry as only "situational" telework was allowed across the PEO during this period.
- (b) (6), (b) (7)(C) was not (b) (6), (b) (7)(C) supervisor of record during at least 10 months of the period examined yet she was assigned to approve his time charges. Therefore, his time was being approved by someone who did not have knowledge of his activities or whereabouts.
- (b) (6), (b) (7)(C) time charges show zero hours of annual leave charged during this one year period. This is highly unusual.

(2) However, there is insufficient evidence to support that (b) (6), (b) (7)(C) is not working all the hours for which he is being paid.

(3) The allegation that (b) (6), (b) (7)(C), Government and (b) (6), (b) (7)(C), during the period of February 2011 to July 2013, did not work for all hours for which he was paid in violation of 5 CFR 2635.705(a), Use of official time is not substantiated.

**c. Conclusion:** This allegation is **not substantiated**.

**d. Recommendation:** None

**e. Disposition:** None

**16. Fifteenth Allegation:** That (b) (6), (b) (7)(C), former PM for (b)(6), (b)(7)(c), (b) (6), (b) (7)(C), former (b)(6), (b)(7)(c) and (b) (6), (b) (7)(C), on or about 8 April 2013 directed or approved the assignment of a DRT Strategies employee to a position that is inherently governmental in violation of (i) FAR 7.503(a), and (ii) Article 92, UCMJ, Failure to obey order or regulation. **Not substantiated.**

**a. Facts:**

(1) Federal Acquisition Regulations (FAR), Subpart 7.5-Inherently Governmental Functions, paragraph 7.503 Policy, states in part, "(a) Contracts shall not be used for the performance of inherently governmental functions... (c) **The following is a list of examples of functions considered to be inherently governmental [emphasis added]** functions or which shall be treated as such. This is not all inclusive: ... (6) The determination of Federal program priorities for budget requests... (7) The direction and control of Federal employees... (12)(iii) Approving any contractual documents, to include documents defining requirements, incentive plans, and evaluation criteria... (d) **The following is a list of examples of functions generally not considered to be inherently governmental functions...[emphasis added]**. (5) Services that involve or relate to the evaluation of another contractor's performance. (6) Services in support of acquisition planning. (7) Contractors providing assistance in contract management (such as where the contractor might influence official evaluations of other contractors). (8) Contractors providing technical evaluations of contract proposals. (9) Contractors providing assistance in the development of statements of work... (13) Contractors participating in any situation where it might be assumed that they are agency employees or representatives..."

(2) Article 92 of the Punitive Articles of the Uniform Code of Military Justice (UCMJ) states in part,

"Any person subject to this chapter who-

(1) violates or fails to obey any lawful general order or regulation;

(2) having knowledge of any other lawful order issued by any member of the armed forces, which it is his duty to obey, fails to obey the order; or

(3) is derelict in the performance of his duties; shall be punished as a court-martial may direct."

(3) The Manual for Courts Martial, Part IV, Punitive Articles para. 16, Failure to obey order or regulation states in part,

"b. *Elements.*

(1) *Violation of or failure to obey a lawful general order or regulation.*

(a) That there was in effect a certain lawful general order or regulation;

(b) That the accused had a duty to obey it, and

(c) That the accused violated or failed to obey the order or regulation."

Additionally, in part c. it states in part,

"General orders or regulations are those orders or regulations generally applicable to an armed force which are properly published by the President or the Secretary of Defense, of Homeland Security, or of a military department..." and

"Knowledge of a general order or regulation need not be alleged or proved, as knowledge is not an element of this offense and a lack of knowledge does not constitute a defense." U.S. Navy Regulations, Chapter 1, Section 1., paragraph 0101 "United States Navy Regulations shall be issued by the Secretary of the Navy with the approval of the President." In 1981, this provision was amended to eliminate the requirement for presidential approval.

(4) The PEO-EIS/PMW 205 ngNET project team was formed to develop a software tool for the ordering of services and equipment by customers of the anticipated NGEN contract. In the spring of 2013, (b) (6), (b) (7)(C), PEO-EIS federal employee, was the ngNET project (b) (6), (b) (7)(C).

(5) There is no specific position description (PD) for the ngNET (b) (6), (b) (7)(C). (b) (6), (b) (7)(C) billet at PEO-EIS/PMW 205 was as the Service Catalogue and Request Fulfillment process owner. Under this billet, she was given 4 areas of responsibility: (b) (6), (b) (7)(C)

[REDACTED]

(6) (b) (6), (b) (7)(C) described some of the types of decisions that she would be called upon to make as the ngNET lead. She stated, "As the ngNET (b) (6), (b) (7)(C) I was responsible for making decisions on a daily and ad hoc basis for which aspect of the tool would be developed, the reprioritization of requirements within the Sprint schedule, determining when to travel to Mechanicsburg to hold meetings with the development team and

stakeholders, how to approach different requirements, how to communicate information to leadership, details of use cases and testing. There were numerous instances of being in the midst of a meeting and a determination of which direction to take had to be made and I was responsible for making the decision."

(7) (b) (6), (b) (7)(C) also described her interactions with contractor personnel as the ngNET (b) (6), (b) (7)(C). She said, "I would identify what needed to be created/revised (deliverables) which contractor on the team would perform that work, then I would review their work, provide feedback to reach a final product. I led four different teams of contractors (20) and one government civilian within the realm of the four areas that I was responsible for. I directed all of them on what needed to be accomplished, established deadlines and reviewed their deliverables."

(8) (b) (6), (b) (7)(C) performance objectives for the period July 2012 to June 2013 under the Alternative Personnel System (APS) were obtained. None of the objectives indicated responsibilities that included (i) determinations or decisions related to program budgets, (ii) the direction of federal employees, or the approval of contractual documents.

(9) (b) (6), (b) (7)(C) did not consider her removal as the ngNET (b) (6), (b) (7)(C) simply a reassignment of workload because she said, "I had three other AORs [Area of Responsibility] that were interrelated with the ngNET development effort. Once I was removed I then became a stakeholder in the development of ngNET, but was never engaged to provide inputs."

(10) We provided (b) (6), (b) (7)(C) descriptions of her duties and responsibilities noted in paragraphs 16.a.(7) & (8) to (b) (6), (b) (7)(C), SPAWAR Office of Counsel. He stated, "It looks to me like they took some of her duties and tasked the contractor to perform them. Given her description in the interview, they looked like the kind of duties that we have contractors performing for other projects. So, it looks like they reassigned work, not a function. The contractor is performing the same functions that contractors have been performing, just on a different project."

(11) In March of 2013, the development of the customer ngNET ordering tool was not progressing under the leadership of (b) (6), (b) (7)(C). (b) (6), (b) (7)(C) who at the time was the APM Fleet and

Customer Engagement (b)(6), (b)(7)(c), had responsibility for the ngNET project.

(12) (b)(6), (b)(7)(C) with the (b)(6), (b)(7)(C) (b)(6), (b)(7)(C) approval decided to make some changes. He stated, "...what (b)(6), (b)(7)(C) and I had decided was that since (b)(6), (b)(7)(C) wasn't really getting the message with regard to what she needed to do, uhm, with regard to the ngNET software development program, the person we put in charge of that was (b)(6), (b)(7)(C), who is a contractor..."

(13) (b)(6), (b)(7)(C) is a (b)(6), (b)(7)(c) for DRT Strategies currently working as a contract support lead for (b)(6), (b)(7)(c) - (b)(6), (b)(7)(c). DRT Strategies was a subcontractor to Deloitte Consulting LLP under Deloitte's contract number N000178-04-D-4020 D.O. NS08. Prior to his employment with DRT Strategies, (b)(6), (b)(7)(c) worked for Deloitte Consulting LLP.

(14) The investigator was unable to obtain a copy of the subcontract to DRT Strategies issued by Deloitte or its statement of work.

(15) (b)(6), (b)(7)(C) was aware of the prohibition on contractor personnel performing inherently governmental work. He explained that this project lead change was made with the strict understanding that he vice (b)(6), (b)(7)(C) would make the government decisions.

(16) (b)(6), (b)(7)(C) email dated 8 April 2013 announced the change. It reads in part, "Good morning everyone, Recently it came to the attention of the program office that the overall tools posture, accountability and strategic planning for current and future needs was fractured between too many efforts. In order to solve this problem, it was decided to make (b)(6), (b)(7)(C) in charge of the overall tools effort... As her new responsibilities will require a significant increase in her workload, it was also decided to give the ngNET project lead to (b)(6), (b)(7)(C). (b)(6), (b)(7)(C) has a wealth of experience in the field of software development, please extend every professional courtesy to him as you would towards myself or (b)(6), (b)(7)(C). For the purposes of communication, (b)(6), (b)(7)(C) speaks with my authority and where needed, I will convey any direction/communication as required."

(17) When the investigator noted that the use of the phrase, (b)(6), (b)(7)(C) speaks with my authority" seemed to imply that (b)(6), (b)(7)(C) had command of the project, (b)(6), (b)(7)(C) responded that

(b) (6), (b) (7)(C) performed, "...within the limits of what's legally allowed." He added that "it really was our only choice at the time because we didn't have a whole lot of government people in the program office. So this was something that I discussed at length with (b) (6), (b) (7)(C) and I believe even (b) (6), (b) (7)(C) at the time."

(18) (b) (6), (b) (7)(C) is the (b)(6), (b)(7)(c) and the (b)(6), (b)(7)(c). Her email also dated 8 April 2013 shows that she believed (b) (6), (b) (7)(C) may have misspoken when describing (b) (6), (b) (7)(C) level of responsibilities. She wrote, "All, I'd like to clarify what (b) (6), (b) (7)(C) intended to say wrt changes to the ngNET team. (b) (6), (b) (7)(C) will be communicating on behalf of (b) (6), (b) (7)(C). He will not be making the actual decisions nor directing other contractors. His role is to make recommendations to the Government so (b) (6), (b) (7)(C) can make the decisions necessary for the team to be successful."

(19) (b) (6), (b) (7)(C) recalled the appointment of (b) (6), (b) (7)(C) to the lead position. He stated that he neither approved nor disapproved of placing (b) (6), (b) (7)(C) in this position. However, (b) (6), (b) (7)(C) acknowledged that as PM he had the authority to veto the decision.

(20) Additionally, (b) (6), (b) (7)(C) did not see any contractors including (b) (6), (b) (7)(C) performing inherently government work. He stated, "I never saw an instance of... contractors doin' inherently governmental work. I just didn't. Uh, if it happened and it was on my watch, then I'm accountable, but I... I didn't see it."

(21) (b) (6), (b) (7)(C), (b)(6), (b)(7)(c), offered the following concerning (b) (6), (b) (7)(C) announcement. He stated, "...so what (b) (6), (b) (7)(C) was doing was putting (b) (6), (b) (7)(C) in charge. He wasn't saying hey, I'm going to go to the beach while (b) (6), (b) (7)(C) runs things, right? I think it was intended in a way that... that uh, (b) (6), (b) (7)(C) was saying, but the truth of the matter is I don't n... I don't know per se, that (b) (6), (b) (7)(C) knew the difference. You know what I'm saying? Uh... uh, he didn't have... uh, I'm gonna say, he didn't have a lot of experience. Or at least I sense he didn't, right? Uhm, and so he sends out a message. (b) (6), (b) (7)(C) was clearly saying 'Hey, let me tell you what you meant to say,' right?"

(22) (b) (6), (b) (7)(C) also noted that certain other contractors who were working on the project expressed concerns

about (b) (6), (b) (7)(C) n leading the ngNET team. He explained, "...Booz Allen Hamilton... was on... they were working a lot of the pro... projects... Right? And they had... they had people. Uhm, this had popped up in transition, so when (b) (6), (b) (7)(C) was gonna be placed to do some of this stuff it... I think the complaints initially came from Booz<sup>15</sup>. Right? 'How can you put that guy in charge when we already have a large team of people workin', right?' So, that's my... my speculation, right... So, there's a lot of back and forth about 'Hey, listen. Do we just go with one clean team? Put (b) (6), (b) (7)(C) in charge of the project and then just simply remove Booz or do you figure out some kinda way to work.' Ultimately, they came down to let's figure out a way to make it work. So, (b) (6), (b) (7)(C) continued to work with the Booz team mix... mix contractor team."

(23) (b) (6), (b) (7)(C) is an associate with Booz Allen Hamilton (BAH) and worked on the ngNET team until November 2013. She stated that BAH, "...acted in good faith that we would continue to work uh, in collaboration as we have with all the other contractors, as we always have since I've been on the contract..." (b) (6), (b) (7)(C) confirmed that there were no government personnel on the ngNET team.

(24) We asked (b) (6), (b) (7)(C), Falconwood employee assigned as the ngNET re-tester, whether (b) (6), (b) (7)(C) was making any decisions as the ngNET lead. She replied, "Not that I've seen. Everything that we come up and he has to say well, I need to speak with (b) (6), (b) (7)(C) about that and then he goes to (b) (6), (b) (7)(C) and then he comes back with a decision from (b) (6), (b) (7)(C) ."

(25) (b) (6), (b) (7)(C) was the NGEN IPT (b) (6), (b) (7)(C) for SSC LANT. We asked (b) (6), (b) (7)(C) for her observations concerning whether (b) (6), (b) (7)(C) was making decisions for ngNET. She responded, "...I don't know for sure. I mean he certainly presented himself as you know being able to uh, you know call the shots, but uhm, you know, (b) (6), (b) (7)(C) said, 'Well, I'm... I'm the lead and he just fills in for me and he supports me.' But... he would lead a lot of the meetings."

(26) (b) (6), (b) (7)(C) recalled events differently. She thought that (b) (6), (b) (7)(C) was performing the same role as his government predecessor, (b) (6), (b) (7)(C) and initially stated that he was making all the decisions. She recalled, "...they acted in the

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<sup>15</sup> Booz Allen Hamilton

same role as far as direction to the team. Directing the team as far as their day-to-day activities... (b) (6), (b) (7)(C) was responsible for all decisions... (b) (6), (b) (7)(C) met with the Booz Allen team twice during the seven months that he was in the position."

(27) Later in the interview (b) (6), (b) (7)(C) clarified her observations of the assignment of the decision making responsibilities by decision type when asked if (b) (6), (b) (7)(C) was rubberstamping every decision or recommendation that (b) (6), (b) (7)(C) made. She said, "On a day-to-day level (b) (6), (b) (7)(C) made all the decisions. As far as the... decision to uhm, break the project into two products<sup>16</sup>... I would say that was (b) (6), (b) (7)(C)." She also understood that (b) (6), (b) (7)(C) would make all the contractual decisions after consideration of (b) (6), (b) (7)(C) input.

## **b. Discussion and Analysis.**

(1) Not every position/responsibility held by a government employee meets the criteria of an inherently governmental function as defined in FAR subpart 7.5. Therefore, (b) (6), (b) (7)(C) argument that her removal as the ngNET lead was not just a reassignment of workload is not relevant. What is relevant is whether or not the type of work performed equates to an inherently governmental function as defined by FAR subpart 7.5.

(2) SME, (b) (6), (b) (7)(C) opined that based on his review of (b) (6), (b) (7)(C) description of her various AORs, the project lead position and its related duties, her removal from the ngNET lead position was the reassignment of work vice a reassignment of function, and that the duties described were like the kind of duties contractors typically perform on projects.

(3) Additionally, the preponderance of evidence shows that (b) (6), (b) (7)(C) vice (b) (6), (b) (7)(C) made the type of decisions for the ngNET project that would be considered inherently governmental such as those that changed the course of the project (prioritizing) or resulted in the obligation of funding for new work (acquisitions). Also, while the ngNET team was a mix of various contractors, there were no federal government employees on the team who took direction from (b) (6), (b) (7)(C).

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<sup>16</sup> Due to the poor progress being made on the development of ngNET, a decision was made to develop a transitional tool based on the existing NMCI ordering tool (NET). The transitional tool project was called NETt.

(4) The allegation that (b) (6), (b) (7)(C) , (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) directed or approved the assignment of a DRT Strategies employee to a position that is inherently governmental in violation of (i) FAR 7.503(a), Inherently Governmental Functions and (ii) Article 92, UCMJ, Failure to obey order or regulation is not substantiated.

c. **Conclusion:** This allegation is **not substantiated**.

d. **Recommendation:** None

e. **Disposition:** None

17. **Interviews and Documents:**

a. **Interviews conducted via telecom unless otherwise noted.**

(1) (b) (6), (b) (7)(C) , USN, (subject), COMSPAWAR, Washington Liaison Office, (b)(6), (b)(7)(c)

(2) (b) (6), (b) (7)(C) , USN, (subject), (b)(6), (b)(7)(c) (b)(6), (b)(7)(c) Wilson Blvd., (b)(6), (b)(7)(c) , (b)(6), (b)(7)(c) , Arlington, VA 22209

(3) (b) (6), (b) (7)(C) , (subject), (b)(6), (b)(7)(c) (b)(6), (b)(7)(c)

(4) (b) (6), (b) (7)(C) , (subject & witness) (b)(6), (b)(7)(c) (b)(6), (b)(7)(c)

(5) (b) (6), (b) (7)(C) , (subject & witness), (b)(6), (b)(7)(c)

(6) (b) (6), (b) (7)(C) , (subject & witness) (b)(6), (b)(7)(c) , (b)(6), (b)(7)(c)

(7) (b) (6), (b) (7)(C) , (subject) COMSPAWAR, Washington Liaison Office, (b)(6), (b)(7)(c)

(8) (b) (6), (b) (7)(C) , (subject & witness), (b)(6), (b)(7)(c) (b)(6), (b)(7)(c)

(9) (b) (6), (b) (7)(C) , (subject & witness), (b)(6), (b)(7)(c) (b)(6), (b)(7)(c)

- (10) (b) (6), (b) (7)(C) [REDACTED], (subject & witness), (b)(6), (b)(7)(c) [REDACTED]  
(b)(6), (b)(7)(c) [REDACTED]
- (11) (b) (6), (b) (7)(C) [REDACTED], (witness), Office of Assistant Secretary of the Navy for Financial Management and Control.
- (12) (b) (6), (b) (7)(C) [REDACTED], (witness) (b)(6), (b)(7)(c) [REDACTED]  
(b)(6), (b)(7)(c) [REDACTED]
- (13) (b) (6), (b) (7)(C) [REDACTED] (witness), U.S. Army, (b)(6), (b)(7)(c) [REDACTED]  
(b)(6), (b)(7)(c) [REDACTED] [REDACTED]  
[REDACTED] [REDACTED]
- (14) (b) (6), (b) (7)(C) [REDACTED] (witness), COMSPAWAR, (b)(6), (b)(7)(c) [REDACTED],  
(b)(6), (b)(7)(c) [REDACTED]
- (15) (b) (6), (b) (7)(C) [REDACTED], (witness) (b)(6), (b)(7)(c) [REDACTED]  
(b)(6), (b)(7)(c) [REDACTED]
- (16) (b) (6), (b) (7)(C) [REDACTED], (witness) (b)(6), (b)(7)(c) [REDACTED],  
for (b)(6), (b)(7)(c) [REDACTED] ).
- (17) (b) (6), (b) (7)(C) [REDACTED] USN (retired), (witness),  
(b)(6), (b)(7)(c) [REDACTED]
- (18) (b) (6), (b) (7)(C) [REDACTED], (witness) Retired, former (b)(6), (b)(7)(c) [REDACTED]  
(b)(6), (b)(7)(c) [REDACTED] [REDACTED]
- (19) (b) (6), (b) (7)(C) [REDACTED], (witness) (b)(6), (b)(7)(c) [REDACTED] -  
(b)(6), (b)(7)(c) [REDACTED]
- (20) (b) (6), (b) (7)(C) [REDACTED], (witness). (b)(6), (b)(7)(c) [REDACTED]  
(b)(6), (b)(7)(c) [REDACTED]
- (21) (b) (6), (b) (7)(C) [REDACTED], (witness) (b)(6), (b)(7)(c) [REDACTED]  
(b)(6), (b)(7)(c) [REDACTED] Pentagon
- (22) (b) (6), (b) (7)(C) [REDACTED], Technical Specialist, (b)(6), (b)(7)(c) [REDACTED]  
(b)(6), (b)(7)(c) [REDACTED]
- (23) (b) (6), (b) (7)(C) [REDACTED], (b)(6), (b)(7)(c) [REDACTED]  
(b)(6), (b)(7)(c) [REDACTED]

(24) (b) (6), (b) (7)(C) , (witness) Total Force  
Manager, (b)(6), (b)(7)(c)

(25) (b) (6), (b) (7)(C) , (witness) currently with the  
(b)(6), (b)(7)(c)

(26) (b) (6), (b) (7)(C) (witness) (b)(6), (b)(7)(c)  
(b)(6), (b)(7)(c)

(27) (b) (6), (b) (7)(C) , (witness), (b)(6), (b)(7)(c)  
(b)(6), (b)(7)(c)

(28) (b) (6), (b) (7)(C) , (witness) (b)(6), (b)(7)(c)  
(b)(6), (b)(7)(c)

(29) (b) (6), (b) (7)(C) , (witness) (b)  
(b)(6), (b)(7)(c)

(30) (b) (6), (b) (7)(C) (witness) (b)(6), (b)(7)(c)  
(b)(6), (b)(7)(c)

(31) (b) (6), (b) (7)(C) , (witness) (b)(6), (b)(7)(c)

(32) (b) (6), (b) (7)(C) , (witness) (b)(6), (b)(7)(c) , (b)(6), (b)(7)(c)  
(b)(6), (b)(7)(c)

(33) (b) (6), (b) (7)(C) , (witness) (b)(6), (b)(7)(c)  
(b)(6), (b)(7)(c)

(34) (b) (6), (b) (7)(C) , (witness) (b)(6), (b)(7)(c)  
(b)(6), (b)(7)(c)

(35) (b) (6), (b) (7)(C) , (witness) (b)(6), (b)(7)(c)  
(b)(6), (b)(7)(c)

(36) (b) (6), (b) (7)(C) , (witness) (b)(6), (b)(7)(c)  
(b)(6), (b)(7)(c)

(37) (b) (6), (b) (7)(C) , (witness), (b)(6), (b)(7)(c)  
(b)(6), (b)(7)(c)

(38) (b) (6), (b) (7)(C) , (witness), (b)(6), (b)(7)(c)  
(b)(6), (b)(7)(c)

(39) (b) (6), (b) (7)(C) , (witness) (b)(6), (b)(7)(c)

(40) (b) (6), (b) (7)(C) (witness) (b)(6), (b)(7)(c)

(41) (b) (6), (b) (7)(C) , (witness) Lead for the  
(b)(6), (b)(7)(c)

(42) (b) (6), (b) (7)(C) , (witness) (b)(6), (b)(7)(c)  
(b)(6), (b)(7)(c)

(43) (b) (6), (b) (7)(C) , (witness) (b)(6), (b)(7)(c)

(44) (b) (6), (b) (7)(C) , (witness), (b)(6), (b)(7)(c)

(45) (b) (6), (b) (7)(C) , (witness), (b)(6), (b)(7)(c)  
(b)(6), (b)(7)(c)

(46) (b) (6), (b) (7)(C) , (witness) (b)(6), (b)(7)(c)

(47) (b) (6), (b) (7)(C) , (witness) (b)(6), (b)(7)(c)

(48) (b) (6), (b) (7)(C) , (witness) (b)(6), (b)(7)(c)  
(b)(6), (b)(7)(c)

(49) (b) (6), (b) (7)(C) , (witness) (b)(6), (b)(7)(c)  
(b)(6), (b)(7)(c)  
(b)(6), (b)(7)(c)

(50) (b) (6), (b) (7)(C) (witness) (b)(6), (b)(7)(c)

(b)(6), (b)(7)(c)

(51) (b) (6), (b) (7)(C) , (witness) (b)(6), (b)(7)(c)

(52) (b) (6), (b) (7)(C) (witness) (b)(6), (b)(7)(c)  
(b)(6), (b)(7)(c)

(53) (b) (6), (b) (7)(C) (witness) (b)(6), (b)(7)(c) ,  
(b)(6), (b)(7)(c)

(54) (b) (6), (b) (7)(C) (witness) (b)(6), (b)(7)(c) ,  
(b)(6), (b)(7)(c)

(55) (b) (6), (b) (7)(C) (witness) (b)(6), (b)(7)(c) ,  
(b)(6), (b)(7)(c)

(56) (b) (6), (b) (7)(C) \* , (witness) Systems  
(b)(6), (b)(7)(c)  
)

(57) (b) (6), (b) (7)(C) (witness) (b)(6), (b)(7)(c)  
(b)(6), (b)(7)(c)

(58) (b) (6), (b) (7)(C) (witness) (b)(6), (b)(7)(c) -  
(b)(6), (b)(7)(c)

(59) (b) (6), (b) (7)(C) (witness) (b)(6), (b)(7)(c)  
(b)(6), (b)(7)(c)

(60) (b) (6), (b) (7)(C) (witness) (b)(6), (b)(7)(c) (b)(6), (b) (7)(c) ,  
(b)(6), (b)(7)(c)

(61) (b) (6), (b) (7)(C) (witness) (b)(6), (b)(7)(c)  
(b)(6), (b)(7)(c)

(62) (b) (6), (b) (7)(C) (witness) (b)(6), (b)(7)(c) ,  
(b)(6), (b)(7)(c)

(63) (b) (6), (b) (7)(C) (witness) (b)(6), (b)(7)(c)  
(b)(6), (b)(7)(c)

(64) (b) (6), (b) (7)(C) , (SME) , (b)(6), (b)(7)(c) ,  
(b)(6), (b)(7)(c)

(65) (b) (6), (b) (7)(C) , (SME) , (b)(6), (b)(7)(c)  
of (b)(6), (b)(7)(c)

(66) (b) (6), (b) (7)(C) , (SME) , (b)(6), (b)(7)(c)  
(b)(6), (b)(7)(c)

(67) (b) (6), (b) (7)(C) (SME) , (b)(6), (b)(7)(c)  
(b)(6), (b)(7)(c)

(68) (b) (6), (b) (7)(C) , (SME) , (b)(6), (b)(7)(c)  
(b)(6), (b)(7)(c)

(69) (b) (6), (b) (7)(C) , (SME) , (b)(6), (b)(7)(c)  
(b)(6), (b)(7)(c)

(70) (b) (6), (b) (7)(C) (SME) , (b)(6), (b)(7)(c)  
(b)(6), (b)(7)(c)

(71) (b)(6), (b)(7)(c) (SME) , (b)(6), (b)(7)(c) (b)(6), (b)(7)(c)  
(b)(6), (b)(7)(c)

(72) (b) (6), (b) (7)(C) , (SME) , (b)(6), (b)(7)(c)  
(b)(6), (b)(7)(c)

(73) (b) (6), (b) (7)(C) , (SME) , (b)(6), (b)(7)(c)  
(b)(6), (b)(7)(c)

(74) (b) (6), (b) (7)(C) , USN , (SME) , (b)(6), (b)(7)(c)  
(b)(6), (b)(7)(c)

(75) (b) (6), (b) (7)(C) , (SME) , (b)(6), (b)(7)(c)  
(b)(6), (b)(7)(c)

(76) (b) (6), (b) (7)(C) , (SME) , (b)(6), (b)(7)(c)  
(b)(6), (b)(7)(c)

(77) (b) (6), (b) (7)(C) (SME) (b)(6), (b)(7)(c) ,  
(b)(6), (b)(7)(c)

(78) (b) (6), (b) (7)(C) (SME) (b)(6), (b)(7)(c)  
(b)(6), (b)(7)(c)

(79) (b) (6), (b) (7)(C) , (SME) (b)(6), (b)(7)(c) ,  
(b)(6), (b)(7)(c)  
(b)(6), (b)(7)(c)

(80) (b) (6), (b) (7)(C) , (SME) , (b)(6), (b)(7)(c)  
(b)(6), (b)(7)(c)

(81) (b) (6), (b) (7)(C) , (SME) (b)(6), (b)(7)(c)  
(b)(6), (b)(7)(c)

(82) (b) (6), (b) (7)(C) , (SME) , (b)(6), (b)(7)(c)  
(b)(6), (b)(7)(c)

(83) (b) (6), (b) (7)(C) (SME) , (b)(6), (b)(7)(c)  
(b)(6), (b)(7)(c)

\* Referenced employees statements were not specifically used in this report

**b. Documents. Code 014 reviewed the following data/information:**

(1) Article 133, UCMJ "Conduct unbecoming an officer and a gentleman"

(2) Article 92, UCMJ "Dereliction of Duty"

(3) DoDI 1438.06 Workplace Violence Prevention and Response Policy dated 16 January 2014

(4) U.S. Navy Regulations, Chapter 10, Section 2. "Authority", Paragraph 1023

(5) Navy (DoN) Civilian Human Resources Manual (CHRM), Subchapter 752, "Disciplinary Actions"

(6) 31 U.S.C. § 1301

(7) FAR 37.101, Service Contracts - General, Definitions.

(8) 5 USC 2301b.(5)

(9) 5 CFR 2635.705, Use of Official Time

(10) FAR Subpart 7.5-Inherently Governmental Functions, paragraph 7.503 Policy

(11) The Manual for Courts Martial, Part IV, Punitive Articles, para. 16. Failure to obey order or regulation

(12) DoD 5400.11-R, Department of Defense Privacy Program, dated May 14, 2007

(13) SECNAVINST 5211.5E, Department of the Navy Privacy Program, dated Dec 28, 2005

(14) 5 CFR Part 2635.101(b)

(15) SPAWARINST 12600.1D Timekeeping Policies & Procedures for Civilian Employees

(16) iSight Webinar *Workplace Bullying What, Why and Who*, Mr. Timothy Dimoff president of SACS Consulting

(17) 8 March 1983, New York Times article, *Venting Anger May Do More Harm than Good*, author Jane Brody

(18) Contract No. N00178-05-D-4323 (Falconwood)

(19) Contract No. N00178-04-D-4024, task NS27 (Booz Allen Hamilton)

(20) Contract No. N000178-04-D-4020, D.O. NS08 (Deloitte Consulting LLP)

(21) Microsoft Outlook email dated 24 January 2011, sender, (b) (6), (b) (7)(C)

(22) Microsoft Outlook email dated 25 February 2011, sender (b) (6), (b) (7)(C) regarding (b) (6), (b) (7)(C) direction

(23) Microsoft Outlook email dated 19 November 2013, sender (b) (6), (b) (7)(C) to (b) (6), (b) (7)(C)

(24) Microsoft Outlook email dated 12 May 2011, sender (b) (6), (b) (7)(C) to (b) (6), (b) (7)(C)

(25) Microsoft Outlook email dated 26 February 2013 sender (b) (6), (b) (7)(C) to (b) (6), (b) (7)(C)

(26) Microsoft Outlook email dated 27 February 2013 sender (b) (6), (b) (7)(C) to (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C)

(27) Microsoft Outlook email dated 30 January 2013 sender (b) (6), (b) (7)(C) to (b) (6), (b) (7)(C)

(28) Microsoft Outlook email dated 23 June 2011 sender (b) (6), (b) (7)(C) to All Hands

(29) Microsoft Outlook email dated 8 April 2013 sender (b) (6), (b) (7)(C) to select staff

(30) Microsoft Outlook email dated 8 April 2013 sender (b) (6), (b) (7)(C) to select staff

(31) Telework Agreement for (b) (6), (b) (7)(C) dated 8 March 2012

(32) Payroll Timekeeping records for (b) (6), (b) (7)(C) for the period 1 August 2012 to 31 July 2013

(33) Work Schedule Change/NERP Profile Request Form for (b) (6), (b) (7)(C) dated 2 September 2010

(34) Alternative Personnel System (APS) objective for the period 1 July 2012 to 30 June 2013 for (b) (6), (b) (7)(C)